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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 176.

SETH BULLOCK, AND SOL STAR AND SETH BULLOCK, COPARTNERS, DOING BUSINESS AS STAR AND BULLOCK, APPELLANTS,

vs.

JOHN L. FARWELL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF DAKOTA.

FILED OCTOBER 16, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 176.

SETH BULLOCK, AND SOL STAR AND SETH BULLOCK, COPARTNERS, DOING BUSINESS AS STAR AND BULLOCK, APPELLANTS,

vs.

JOHN L. FARWELL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF DAKOTA.

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1 *Notice of Appeal.*

In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock, Defendants.

TERRITORY OF DAKOTA, } ss:
County of Lawrence. }

To the above-named plaintiff, and to Messrs. Vancise, Wilson & Marten, his attorneys, and to Frank J. Washabaugh, Esq., clerk of said district court:

Take notice that the defendant- herein, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star and Bullock, and each of them, appeal to the supreme court of the Territory of Dakota from the judgment herein rendered, and filed in the office of the clerk of said district court of the first judicial district of the Territory of Dakota within and for the county of Lawrence, in favor of said plaintiff, John L. Farwell, and against said defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star & Bullock, on the 14th day of August, A. D. 1882, and from each and every part thereof.

McLAUGHLIN & STEELE,
Attorneys for Defendants.

2 *Undertaking on Appeal.*

In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Defendants.

Whereas on the 14th day of August, 1882, the above-named John L. Farwell, plaintiff, recovered a judgment against the above-named defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star & Bullock, for the sum of two thousand two hundred and thirty-one $\frac{65}{100}$ dollars and the costs of said action, taxed and twenty-two $\frac{65}{100}$ dollars; in all the sum of two thousand two hundred and fifty-four $\frac{30}{100}$ dollars, and that said plaintiff have execution therefor;

And whereas the defendants intend to appeal from said judgment in said action to the supreme court of the Territory of Dakota:

Now, therefore, we, Alvin Fox and Harris Franklin, of Deadwood, in the county of Lawrence and Territory of Dakota,
3 undertake, pursuant to the statute, that the said defendants, appellants, shall pay all costs and damages that may be awarded against them on such appeal or on the dismissal thereof, not exceeding two hundred and fifty (250.00) dollars.

And we also undertake, pursuant to the statute, that if said judgment or any part thereof be affirmed or the appeal be dismissed, the

said appellants shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damage which may be awarded against the appellant on such appeal.

Dated August 30th, A. D. 1882.

ALVIN FOX.
HARRIS FRANKLIN.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

On this 30th day of August, A. D. 1882, before me, James S. Mullaly, a notary public in and for said county and Territory, came Alvin Fox and Harris Franklin, to me personally known to be the persons described in and who executed the foregoing undertaking, and severally acknowledged to me that they executed the same.

[SEAL.] JAMES S. MULLALY,
Notary Public.

4 TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Alvin Fox and Harris Franklin, being duly sworn, each for himself and not one for the other, says that he is one of the subscribers to the foregoing undertaking; that he is a resident and householder within said county and Territory, and is worth the sum of five thousand and ten ($5,010.00) dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution.

ALVIN FOX.
HARRIS FRANKLIN.

Subscribed and sworn to before me this 30th day of August, A. D. 1882.

[SEAL.] JAMES D. MULLALY,
Notary Public.

Endorsed: Notice of an undertaking of appeal. Service admitted by copies this 30th day of August, 1882. Vancise, Wilson & Marten, att'ys for pl'ffs. Frank J. Washabaugh, clerk. Filed Aug. 30, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep.

5 In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Defendants.

TERRITORY OF DAKOTA, } ss:
County of Lawrence }

To Messrs. Vancise, Wilson & Marten, attorneys for the above-named plaintiff, John L. Farwell:

You will please take notice that on Saturday, the 5th day of August, A. D. 1882, at the hour of ten o'clock a. m. of that day, or as

soon thereafter as counsel can be heard, the defendants above named will move the court to order the four several actions now depending in said court in favor of said plaintiff and against these defendants to be consolidated into one.

This motion will be based upon the pleadings in said several actions and the accompanying motion and affidavits.

McLAUGHLIN & STEELE,
Attorneys for Defendants.

6 *Motion.*

In the District Court of First Judicial District.

JOHN L. FARWELL, Plaintiff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock, Defendants.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

Now come the said defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star & Bullock, and move the court now here to consolidate into one the four several actions now depending in this court, in each of which the said John L. Farwell is plaintiff and the said Seth Bullock, and Sol Star & — Bullock, copartners, or as Star & Bullock, are defendants, and which said actions could all have been joined in one action, and are now on the August, A. D. 1882, trial docket of said court for trial, and numbered respectively 275, 276, 281, and 305.

McLAUGHLIN & STEELE,
Attorneys for Defendants.

7 In District Court, First Judicial District.

JOHN L. FARWELL, Plaintiff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners in Business as Star & Bullock, Defendants.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

Seth Bullock, being first duly sworn, make oath and says that he is one of the defendants above named; that the four several actions now pending in this court, wherein the said John L. Farwell is plaintiff and this affiant, Seth Bullock, and Sol Star and Seth Bullock, copartners, &c., as Star & Bullock, are defendants, are each instituted to recover upon promissory notes made by affiant and endorsed by said defendants, Star & Bullock, and that said four promissory notes were all executed and delivered at the same time, to the same payee, upon the same consideration, and that plaintiff claims title to the same, and each of them, as endorsee of such payee.

Affiant further says that the defense in each of said several
8 actions is the same and identical, and that affiant is informed by his counsel, and believes such to be the fact, that the said four causes of action are such as would by law be joined in one complaint.

SETH BULLOCK.

Subscribed and sworn to before me this 31st day of July, A. D. 1882; and I further certify that the foregoing affidavit was read to the affiant in my presence and hearing before he subscribed his name thereto, and he stated to me that he fully understood the same.

[SEAL.] JAMES S. MULLALY,
Notary Public.

(Endorsed:) Notice. Motion and affidavit. Service admitted by copies August 1st, 1882. Vancise, Wilson & Marten. Filed August 1, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep'y.

9 In District Court, First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK *et al.*, Defendants.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

On reading and filing the motion of defendants to consolidate into one the four several actions now depending in this court, on each of which the above-named John L. Farwell is plaintiff and the above-named Seth Bullock, and Sol Star and Seth Bullock, copartners doing business under the firm name and style of Star & Bullock, are defendants, said action being now on the August calendar of this court for trial, and numbered, respectively, 275, 276, 281, and 305; after hearing Messrs. McLaughlin & Steele in support of said motion, and Messrs. Vancise, Wilson & Marten in opposition thereto, ordered that said motion be, and the same is hereby, sustained and allowed, and the said four several actions are hereby ordered consolidated into one action, and said consolidated action shall stand on the trial docket of this court for the August term, A. D. 1882, as of the place of the first of said actions, numbered 275; that it shall not be necessary or required that new pleadings be filed in such con-
10 solidated action, but, by the consent of the party, that the complaint in said four several actions shall be regarded as a complaint in such consolidated action, with the same force and effect as if a complaint in such action had been served and filed declaring upon said four promissory notes sought to be recovered on in said four several actions; that the answers of the defendants in said four several actions shall be regarded as an answer to said complaint in said consolidated action with the same force and effect as if an answer to such consolidated complaint had been served and filed answering each cause of action in such consolidated complaint, and

the demurrers of the plaintiff to the four several answers shall be regarded as a demurrer to such consolidated answer, with the same force and effect as if a demurrer to such answer had been served and filed, demurring to each defense in such consolidated answer, and said consolidated action shall proceed as if said four several actions had been commenced as one, the costs already accrued in said four several actions to be taxed as costs in such consolidated action.

Done in open court this 12th day of August, A. D. 1882.

By the court:

G. C. MOODY, *Judge.*

(Endorsed:) Filed August 12, 1882. Frank J. Washabaugh, clerk.

11 In the District Court in and for Lawrence County.

JOHN L. FARWELL, Pl'ff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Def'ts.

TERRITORY OF DAKOTA, } *ss:*
First Judicial District, }

The Territory of Dakota sends greeting to the above-named defendant-:

You are hereby summoned and required to answer the complaint of the above-named plaintiff, which will be filed in the office of the clerk of the district court within and for said Lawrence county, at Deadwood, D. T., and to serve a copy of your answer on the subscribers, at their office, in the city of Deadwood, within thirty days after the service of this summons, exclusive of the day of service, or the plaintiff will take judgment against you for five hundred dollars, with interest from June 18, 1881, at 10% per annum, besides costs and protest fees, $3.25.

Deadwood, D. T., January 30th, 1882.

VANCISE, WILSON & MARTEN,
Plaintiff's Attorneys.

Filed August 14, 1882.

FRANK J. WASHABAUGH, *Clerk,*
By C. C. MOODY, *D'y.*

12 $500.00 DEADWOOD, DAKOTA, *June* 18, 1881.

Six months after date I promise to pay to the order of F. W. Denton, cashier Corbin Banking Co., five hundred dollars at Merchants' National Bank, Deadwood, Dakota, value received, with interest at 10% per annum.

SETH BULLOCK.

Endorsed on back: Star & Bullock; F. W. Dunton, cash'r. Pay R. C. Lake, president, or order. John L. Farwell.

Protest.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Be it remembered that on the day of the date hereof, I, B. P. Dagne, a notary public in and for said county and Territory, duly commissioned and qualified, residing in said county, at the request of 1st Nat. Bank, Deadwood, D. T., holder of the original note, which is hereto attached, presented the same at the Merchants' National Bank, the place where same was made payable, and demanded payment thereof, and was refused, for the reason — no instructions. Whereupon I, said notary, at the request aforesaid, have this day protested, and do hereby solemnly protest, against the said Seth Bullock, and against the endorsers thereof, and all others concerned, for
13 all exchange, re-exchange, interest, damages, and costs accrued and to accrue, by reason of the non-payment thereof.

This done and protested at Deadwood, D. T., this 21st day of December, 1881.

And I, the said notary, do hereby further certify that on the same day and year above written due notice of the foregoing protest and non-payment was put by me in the post-office at Deadwood, D. T., postage prepaid, directed as follows:

Notice for Seth Bullock, Deadwood, Dak.

Notice for Star & Bullock, do. do.

Notice for Merchants' Nat. Bank, Deadwood, Dak.

Notice for F. W. Dunton, ca. of Claremont Nat. Bank, Claremont, N. H.

Notice for Jno. L. Farwell.

Each of the above-named places being the place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] B. P. DAGNE,
Notary Public.

Fees: Protest and record, $2.00; 5 notices, 1.25; seal, 25 cents; postage, 06 cents—$3.56.

Filed August 14, 1882.

FRANK J. WASHABAUGH, *Clerk*,
By C. MOODY, *Dep.*

14 In the District Court of the First Judicial District of the Territory of Dakota, in and for Lawrence Co.

JOHN L. FARWELL, Pl'ff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners, & Doing Business as Star & Bullock.

The plaintiff complains of the defendants and alleges:

That on the 18th day of June, 1881, the defendant, Seth Bullock, at Deadwood, Lawrence county, D. T., made his certain promissory

note in writing, dated on that day, whereby, for value received, he promised to pay F. W. Dunton, cashier Corbin Banking Company, the sum of five hundred dollars, six months after date, at Merchants' National Bank, Deadwood, D. T., with interest thereon at the rate of ten per cent. per annum.

2. That at that time the defendants, Lot Star and Seth Bullock, were copartners, doing business under the firm name and style of Star & Bullock, and as such copartners, and by their firm name of Star & Bullock, endorsed and guaranteed the payment of said note by writing their said firm name upon the back of said note.

3. That immediately thereafter the defendant delivered the said note to the said payee.

4. That thereafter, before maturity, for value received, the said payee sold, assigned, and transferred the said note to this plaintiff.

5. That when said note became due the same was duly presented for payment at the Merchants' National Bank, Deadwood, D. T., the place where the same was made payable, and payment thereof then and there duly demanded, which was refused; whereupon the said note was then and there duly protested for non-payment, [of] all of which the defendants had due notice.

6. That said note became due before the commencement of this action and remains wholly unpaid.

Wherefore plaintiff demands judgment against the defendants for five hundred dollars, with interest thereon at 10% per annum since June 18, 1881, and $3.25, protest fees, and the cost of this action.

VANCISE, WILSON & MARTEN,
Att'ys for Pl'tf.

TERRITORY OF DAKOTA, }
Lawrence County, } *ss:*

John R. Wilson, being duly sworn, says he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true; that this action is based on a written instrument for the payment of money only and — is in affiant's possession; that the reason that this verification is not made by pl'ff is that he is a non-resident of, and now absent from, this Territory; that said note and letters from plaintiff are the sources of affiant's knowledge.

JOHN R. WILSON.

Subscribed and sworn to before me this 23d of Feb., 1882.

[SEAL.] B. P. DAGNE,
Notary Public.

(Endorsed:) Filed April 29th, 1882. Frank J. Washabaugh, clerk.

17 TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

S. M. Houghton, being duly sworn, says he is 19 years of age and a resident of Lawrence county, D. T.; that he served the within summons and complaint of the within-named defendants, Seth Bullock and Sol Star, personally, by delivering to and leaving with each of said defendants, personally, a true copy thereof in Lawrence county, D. T., on the 24th day of February, A. D. 1882, and that he knew [them] to be the persons mentioned and described in the summons as defendants therein.

S. M. HOUGHTON.

Subscribed and sworn to before me this 24th day of February, A. D. 1882.

[SEAL.] A. S. STEWART,
Notary Public.

18 *Answer.*

In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Defendants.

TERRITORY OF DAKOTA, *County of Lawrence.*

The defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star & Bullock, for answer to the complaint of plaintiff herein, deny each and every allegation of said complaint except as hereinafter stated.

Said defendants admit that the defendant, Seth Bullock, executed and delivered the note mentioned in the plaintiff's complaint, as maker thereof, to F. W. Dunton, cashier of the Corbin Banking Company, which said last-named company is a corporation organized and existing under the laws of the State of New York.

Admit that said note was endorsed by said firm of Star [&] Bullock at the time of its delivery to said company.

Admit that said note has not been paid to the plaintiff;
19 but defendant-deny that said plaintiff is the owner of said note, or that the defendants, or either of them, are indebted to the plaintiff thereon in any manner or in any sum.

2. Further answering said complaint, and as a defense thereto, defendants allege on information and belief that the plaintiff, John L. Farwell, is an employee or agent of the said Corbin Banking Company of New York, and has no interest in said note, except as such employee or agent, and that the said Corbin Banking Company is the owner of the note mentioned and the real party in interest in this action.

3. Further answering said complaint, and as a defense and counter-claim thereto, defendants allege that said Corbin Banking Company is a necessary party to this action and to a complete de-

termination of the same; that the defendant, Bullock, who is the maker of said note, has and claims a counter-claim against said Corbin Banking Company on a breach of contract of employment as agent in the year A. D. 1877, by which said defendant Bullock was damaged and injured in the sum of three thousand dollars in this: That on or about the 10th day of July, 1877, the said Corbin Banking Company, as a municipal security company, made and entered into an agreement and contract with said defendant Bullock, by which said defendant was employed to act as the agent of said company in the purchase of county warrants of the counties of
20 Lawrence, Pennington, and Carter, in the Territory of Dakota, when such warrants could be obtained at prices deemed reasonable and profitable, and that it would furnish the money to said defendant necessary and requisite to be used in the purchase of warrants of said county, and pay him, as compensation for said services, one-third of the profits arising from the purchase of the warrants of said county.

That said defendant was at all times ready and willing to perform this contract on his part prior to the commencement of this action, and offered to perform the same, but that the said Corbin Banking Company neglected and failed to furnish the money needed in purchasing the warrants of said county; that from the time of the making of said contract until the first of January, 1879, there was a large amount of the warrants of Lawrence county issued, which defendant could have purchased in the open market and from private owners thereof for thirty-five cents on the dollar, to wit, about the amount of one hundred thousand dollars, upon which the Corbin Banking Company should have made a reasonable profit of ten thousand dollars before the commencement of this action, and of which this defendant would have been entitled to one-third, or about the sum of three thousand three hundred dollars.

21 That the Corbin Banking Company made breach in said contract by neglecting, failing, as in refusing to furnish defendant with the money necessary and requisite to purchase warrants, as it had promised and agreed to do, by reason of which breach the defendant Bullock has been injured and damaged in the sum of $3,000.00.

We therefore, defendants, pray that said Corbin Banking Company may be adjudged to be the real party in interest as plaintiff in this action, and that the defendant Bullock have judgment against it for three thousand dollars damages, less the amount of the note mentioned in the complaint, and interest with his costs.

McLAUGHLIN & STEELE,
Att'ys for Def't.

TERRITORY OF DAKOTA, }
County of Laurence, } *ss:*

Seth Bullock, being first duly sworn, makes oath and says that he is one of the defendants in the above-entitled action; that he
22 has read the foregoing answer, knows the contents thereof,

and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

SETH BULLOCK.

Sworn to before me and subscribed in my presence this 23d day of March, A. D. 1882.

[SEAL.] JAMES S. MULLALY,
Notary Public.

(Endorsed:) Service by copy admitted this 24th day of March, 1882. Vancise, Wilson & Martin, att'ys for plaintiff. Filed April 29, 1882. Frank J. Washabaugh, clerk.

23 In District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL *vs.* SETH BULLOCK *et al.*

To the above-named defendants and Messrs. McLaughlin & Steele, their attorneys:

Please take notice that on Thursday, the 30th day of March, A. D. 1882, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, the plaintiff in the above-entitled action will apply to the judge of this court for an order overruling the answer served herein as frivolous and for judgment thereon.

That said motion will be based upon the papers and pleadings served herein.

Deadwood, March 24th, 1882.

VANCISE, WILSON & MARTEN,
Attorneys for Plaintiff.

(Endorsed:) Service by copy admitted this 24th day of March, A. D. 1882. McLaughlin & Steele, atty's for def't. Filed April 29, 1882. Frank J. Washabaugh, clerk.

24 In the District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

Now comes the plaintiff and demurs to the answer of defendants herein upon the ground that it appears upon the face of the said answer that the facts therein stated do not constitute a defence or counter-claim.

VANCISE, WILSON & MARTEN,
Attorneys for the Plaintiff.

(Endorsed:) Service by copy admitted this 1 day of May, A. D. 1882. McLaughlin & Steele, atty's for defendants.

25 In District Court of the First Judicial District of Dakota Territory, in and for the County of Lawrence.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

This cause having been brought to trial on the issues of law joined therein, to wit, the demurrer of plaintiff to the answer of defendants, after hearing Messrs. Vancise, Wilson & Marten in support of said demurrer and Mess. McLaughlin & Steele in opposition thereto, ordered that the said demurrer be, and the same is hereby, sustained, and that plaintiff have judgment thereon, but with leave to the defendants to amend their answer by the coming in of court on the morning of the 7th day of August, 1882.

Done this 1st day of August, 1882.

By the court:

P. C. MUDDY, *Judge.*

26 To which order and ruling of the court defendants, by their counsel, then and there excepted.

P. C. MOODY, *Judge.*

(Endorsed:) Filed Aug. 8, 1882. H. A. Mondy, dep'y.

27 TERRITORY OF DAKOTA, } *ss:*
First Judicial District, Lawrence County, }

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR & SETH [BULLOCK], Copartners as Star & Bullock.

The Territory of Dakota sends greeting to the above-named defendant-:

You are hereby summoned and required to answer the complaint of the above-named plaintiff, which will be filed in the office of the clerk of the district court within and for said Lawrence county, at Deadwood, D. T., and to serve a copy of your answer on the subscribers, at their office, in the city of Deadwood, within thirty days after the service of this summons, exclusive of the day of service, or the plaintiff will take judgment against you for five hundred dollars, with interest from June 18th, 1881, at 10% per annum, besides costs and $3.50, protest fees.

Deadwood, D. T., February 21, 1882.

VANCISE, WILSON & MARTEN,
Plaintiff's Attorneys.

Filed April 29th, 1882.

FRANK J. WARSHABAUGH, *Clerk,*
By C. A. MOODY, *Dep'y.*

28 $500.00. DEADWOOD, DAKOTA, *June* 18, 1882.

Eight months after date, for value received, I promise to pay to the order of F. W. Dunton, cashier Corbin Banking Co., five hundred dollars at Merchants' National Bank, Deadwood, Dakota, value received, with interest at 10 % per annum.

SETH BULLOCK.

(Endorsed on back:) Star & Bullock. F. W. Dunton, cash'r. Paid First National Bank, Deadwood, Dakota. John L. Farwell.

Protest.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Be it remembered that on the day of the date hereof I, B. P. Dagne, a notary public in and for said county and Territory, duly commissioned and qualified, residing in said county, at the request of the First Nat. Bank of Deadwood, Dak., holder of the original note, which is hereto attached, presented the same to Seth Bullock at his place of business, also at Merchants' Nat. Bank, the place where the same was made payable, and demanded payment thereof,
29 and was refused for the reason —, whereupon I, the said notary, at the request aforesaid, have this day protested, and do hereby solemnly protest, against the said Seth Bullock, and against the endorsers thereof, and all others concerned, for all exchange, re-exchange, interest, damages, and costs accrued, or to accrue, by reason of the non-payment thereof.

This done and protested at Deadwood, D. T., this 21st day of February, 1882.

And I, the said notary, do hereby further certify that on the same day and year above written due notice of the foregoing protest and non-payment was put by me in the post office at Deadwood, Dak.

Notice for Merchants' Nat. Bank, Deadwood, Dak.

Notice for Star & Bullock, do.

Notice for Seth Bullock, c. o. Star & Bullock, Deadwood, Dak.

Notice for F. W. Dunton, cash., c. o. John L. Farwell, Clairmont, N. H.

Notice for Jno. L. Farwell, c. o. Clairmont Nat. Bank, N. H.

Each of the above-named places being the place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

B. P. DAGNE,
Notary Public.

Fees: Protest and record, $2.00; notices, 1.25; seal, 25 cents.; postage, $3.50.

In the District Court of the First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL, Plaintiff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners, &c., Doing Business as Star & Bullock.

The plaintiff complains of the defendants herein and alleges:

That on the 18th day of June, 1881, the defendant, Seth Bullock, at Deadwood, Lawrence County, D. T., made his certain promissory note in writing, dated on that day, whereby, for value received, he promised to pay to F. W. Dunton, cashier Corbin Banking Company, the sum of five hundred dollars eight months after date at Merchants' National Bank, Deadwood, D. T., with interest thereon at ten per cent. per annum.

2. That at that time the defendants, Sol Star and Seth Bullock, were copartners doing business under the firm name and style of Star & Bullock, and as such copartners and by their firm-
31 name of Star & Bullock endorsed and guaranteed the payment of said note by writing their said firm name upon the back of said note.

3. That immediately thereafter the defendants delivered the said note to the said payee.

4. That thereafter, before maturity, for value received, the said payee sold, assigned, and transferred the said note to this plaintiff.

5. That when said note became due the same was duly presented for payment at the Merchants' National Bank, Deadwood, D. T., the place where the same was made payable, and payment thereof then and there duly demanded, which was refused, whereupon the said note was then and there duly protested for non-payment, [of] all of which the defendant- had due notice.

6. That said note became due before the commencement of this action and remains wholly unpaid.

Wherefore plaintiff demands judgment the against defendants for five hundred dollars and interest thereon at 10% per annum
32 since June 18th, 1881, and $3.25, protest fees, and the costs of this action.

VANCISE, WILSON & MARTEN,
Attorneys for Plaintiff.

TERRITORY OF DAKOTA, }
Lawrence County, } *ss:*

John B. Wilson, being duly sworn, says he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true; that this action is based on a written instrument for the payment of money only and is in affiant'- possession; that the reason this verification is not made by pl'ff is that

he is a non-resident of and now absent from the Territory; that said note and letters from pl'ff are the sources of affiant's knowledge.

JOHN B. WILSON.

Subscribed and sworn to before me this 23d day of Feb., 1882.

[SEAL.] B. R. DAGNE,
Notary Public.

33 TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

S. M. Houghton, being duly sworn, says he is 19 years of age and a resident of Lawrence county, D. T.; that he served the within summons and complaint on the within-named defendants, Seth Bullock and Sol Star, personally, by delivering to and leaving with each of them, the said def'ts, a true copy thereof in Lawrence county, D. T., on the 24th day of February, A. D. 1882, and that he knew the persons served to be the persons mentioned and described in the summons as defendants therein.

S. M. HOUGHTON.

Subscribed and sworn to before me this 24th day of February, A. D. 1882.

A. S. STEWART,
Notary Public.

(Endorsed:) Filed April 29th, 1882. Frank J. Washabaugh, clerk.

34 *Answer.*

In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
v.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Defendants.

TERRITORY OF DAKOTA, *County of Lawrence:*

The defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star and Bullock, for answer to the complaint of plaintiff herein, deny each and every allegation of said complaint except as hereinafter stated.

1. Said defendants admit that the defendant, Seth Bullock, executed and delivered the note mentioned in the plaintiff's complaint as maker thereof to F. W. Dunton, cashier of the Corbin Banking Company, which said last-named company is a corporation organized and existing under the laws of the State of New York.

35 Admit that said note was endorsed by said firm of Star & Bullock at the time of its delivery to said company.

Admit that said note has not been paid to the plaintiff; but defendants deny that said plaintiff is the owner of said note, or that the defendants, or either of them, are indebted to the plaintiff thereon in any manner or in any sum.

2. Further answering said complaint, and as a defense thereto,

defendants allege on information and belief that the plaintiff, John L. Farwell, is an employee or agent of the said Corbin Banking Company, at New York, and has no interest in said note except as such employee or agent, and that the said Corbin Banking Company is the owner of the note mentioned and the real party in interest in this action.

3. Further answering said complaint, and a defence and counter-claim thereto, defendants allege that said Corbin Banking Company is a necessary party to this action, and to a complete determination of the same; that the defendant Bullock, who is the maker of said note, has and claims a counter-claim against said
36 Corbin Banking Company on a breach of contract of employment as agent in the year A. D. 1877, by which said defendant Bullock was damaged and injured in the sum of three thousand dollars, in this, that on or about the 10th day of July, 1877, the said Corbin Banking Company, as a municipal security company, made and entered into an agreement and contract with said defendant Bullock, by which said defendant was employed to act as the agent of said company in the purchase of county warrant of the county of Lawrence, Pennington, and Carter, in the Territory of Dakota, when such warrant could be obtained at prices deemed reasonable and profitable, and that it would furnish the money to said defendant necessary and requisite to be used in the purchase of warrant- of said counties, and pay him as compensation for said Territory one-third of the profits arising from the purchase of the warrants of said counties.

That said defendant was at all times ready to perform the contract on his part prior to the commencement of this action, and offered to perform the same, but that the said Corbin Banking Company neglected and failed to furnish the money needed in purchasing the warrants of said counties; that from the time of the making
37 of said contract until the first of January, 1879, there was a large amount of the warrants of Lawrence county issued, which defendant could have purchased in the open market and from private owners thereof for thirty-five cents on the dollar, to wit, about the amount of one hundred thousand dollars, upon which the Corbin Banking Company could have made a reasonable profit of ten thousand dollars, before the commencement of this action, and of which this defendant would have been entitled to one-third, or about the sum of three thousand three hundred dollars.

That the Corbin Banking Company made breach in said contract by neglecting, failing, and refusing to furnish defendant with the money necessary and requisite to purchase warrants, as it had promised and agreed to do, by reason of which breach the defendant Bullock has been injured and damaged in the sum of $3,000.00.

Wherefore defendants pray that said Corbin Banking Com-
38 pany may be adjudged to be the real party in interest as plaintiff in this action, and that the defendant Bullock have judgment against it for three thousand dollars damages, less the amount of the note mentioned in the complaint, and interest, with his costs.

McLAUGHLIN & STEELE,
Att'ys for Def'ts.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Seth Bullock, being first duly sworn, makes oath and says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

SETH BULLOCK.

Sworn to before me and subscribed in my presence this 23d day of March, A. D. 1882.

[SEAL.] JAMES S. MULLALY,
Notary Public.

(Endorsed:) Service of the within accepted this 24th day of March, A. D. 1882. Filed April 29th, 1882. Vancise, Wilson & Martin, attorneys for plaintiff. Frank Washabaugh, clerk.

39 In District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK *et al.*, Defendants.

Please take notice that on Thursday, the 30th day of March, A. D. 1883, at 10 o'clock a. m. of that day, or [as] soon thereafter as counsel can be heard, the plaintiff in the above-entitled action will apply to the judge of this court for an order overruling the answer served herein as frivolous, and for judgment thereon.

That said motion will be based upon the papers and pleadings served herein.

Deadwood, March 24th, A. D. 1882.

VANCISE, WILSON & MARTEN,
Attorneys for Plaintiff.

(Endorsed:) Service by copy admitted this 24th day of March, A. D. 1882. Deadwood, D. T. McLaughlin & Steele, attorneys for def't. Filed April 29th, 1882. Frank J. Washabaugh, clerk.

40 In the District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

Now comes the plaintiff and demurs to the answer of defendants herein upon the ground that it appears upon the face of the said

answer that the facts therein stated do not constitute a defense or counter-claim.

VANCISE, WILSON & MARTEN,
Attorneys for Plaintiff.

(Endorsed:) Service by copy admitted this 1st day of May, A. D. 1882. McLaughlin & Steele, att'ys for defendants.

41 In District Court of the First Judicial District of Dakota Territory, in and for the County of Lawrence.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock.

This cause having been brought to trial on the issues of law joined therein, to wit, the demurrer of plaintiff to the answer of defendants, after hearing Messrs. Vancise, Wilson & Martin in support of said demurrer and Messrs. McLaughlin & Steele in opposition thereto:

Ordered, that the said demurrer be, and the same is hereby, sustained, and that plaintiff have judgment thereon, but with leave to the defendants to amend their answer by the coming in of court on the morning of the 7th day of August, 1882.

By the court:

G. C. MOODY, *Judge.*

42 To which order and ruling of the court defendants, [by] their counsel, then and there excepted.

G. C. MOODY, *Judge.*

(Endorsed:) Filed Aug. 8, 1882. Frank J. Washabaugh, clerk, by C. C. Moody, dep'y.

43 In the District Court in and for Lawrence County.

JOHN L. FARWELL, Pl'ff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Def'ts.

TERRITORY OF DAKOTA, } *ss:*
First Judicial District, }

The Territory of Dakota sends greeting to the above-named defendant:

You are hereby summoned and required to answer the complaint of the above-named plaintiff, which will be filed in the office of the clerk of the district court within and for said Lawrence county, at Deadwood, D. T., and to serve a copy of your answer on the subcribers at their office, in the city of Deadwood, within thirty days after the service of this summons, exclusive of the day of service,

or the plaintiff will take judgment against you for five hundred dollars, with interest at 10 % per annum from June 18, 1881, besides costs and $3.25 protest fees.

Deadwood, D. T., April 29, 1882.

VANCISE, WILSON & MARTEN,
Plaintiff's Attorneys.

44 $500.00. DEADWOOD, DAKOTA, *June 18th*, 1882.

Ten months after date I promise to pay to the order of F. W. Dunton, cashier Corbin Banking Co., five hundred dollars, at Merchants' National Bank, Deadwood, Dakota, value received, with interest at 10 % per annum.

SETH BULLOCK.

[Written across the face in red ink:] No. 15685. Protested for non-payment April 21, 1882. A. J. Parshall, notary public. Judgment hereon August 14, 1882. Frank J. Washabaugh, clerk, by C. A. Moody.

(Endorsed on back:) Star & Bullock. F. W. Dunton, cash'r. R. C. Lake, president, or order. Jno. L. Farwell.

Protest.

TERRITORY OF DAKOTA, }
County of Lawrence, } *ss:*

Be it remembered that on the day of the date hereof I, A. J. Parshall, a notary public in and for said county and Territory, duly commissioned and qualified, residing in said county, at the request of the First National Bank of Deadwood, D. T., holder of the original promissory note, which is hereto attached, presented the same to Seth Bullock, and to A. Fox, cashier of the Merchants' Nat. Bank, of Deadwood, where — is made payable, and demanded payment thereof, and was refused, no reason given; whereupon I, the said notary, at the request aforesaid, have this day protested,
45 and do hereby solemnly protest, against the said Seth Bullock, and against the endorsers thereof and all others concerned, for all exchange, re-exchange, interest, damages, and costs accrued and to accrue by reason of the non-payment thereof.

This done and protested at Deadwood, D. T., this 21st day of April, 1882.

And I, the said notary, do hereby further certify that on the same day and year above written due notice of the foregoing protest and non-payment was put by me in the post office at Deadwood, D. T., postage prepaid, directed as follows:

Notice for Seth Bullock, Deadwood, D. T.
Notice for Star & Bullock, "
Notice for F. W. Dunton, cash'r (care Jno. L. Farwell).
Notice for Jno. L. Farwell, Claremont, N. H.
Notice for —.

Each of the above-named places being the place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] A. J. PARSHALL,
Notary Public.

Fees: Protest and record, $2.00; 4 notices, 1; seal, 25 cents; postage, $3.25.

Filed August 14, 1882.

FRANK J. WASHABAUGH, *Clerk*,
By C. A. MOODY, *D'y.*

46 In the District Court of the First Judicial District of the Territory of Dakota, in and for Lawrence Co.

JOHN L. FARWELL, Pl'ff,

vs.

SETH BULLOCK, and SOL STAR, and SETH BULLOCK, Copartners, Doing Business as Star & Bullock.

The plaintiff complains of the defendants herein and alleges:

That on the 8th day of June, 1881, the defendant, Seth Bullock, at Deadwood, Lawrence county, D. T., made his certain promissory note in writing, dated on that day, whereby, for value received, he promised to pay F. W. Dunton, cashier Corbin Banking Company, the sum of five hundred dollars, ten months after date, at Merchants' National Bank, Deadwood, D. T., with interest thereon at the rate of ten per cent. per annum.

2. That at that time the defendants, Sol Star and Seth Bul-
47 lock, were copartners, doing business under the firm name and style of Star & Bullock, and as such copartners and by their firm name, Star & Bullock, endorsed and guaranteed the payment of said note by writing their said firm name upon the back of said note.

3. That immediately thereafter the defendants delivered the said note to the said payee.

4. That thereafter, before maturity, for value received, the said payee sold, assigned, and transferred the said note to this plaintiff.

5. That when said note became due the same was duly presented for payment at the Merchants' National Bank, Deadwood, D. T., the place where the same was made payable, and payment thereof then and there duly demanded, which was refused; whereupon the said note was then and there duly protested for non-payment, [of] all of which the defendants had due notice.

6. That said note became due before the commencement of this action, and remains wholly unpaid.

48 Wherefore plaintiff demands judgment against the defendants for five hundred dollars, with interest thereon at 10 % per annum since June 18, 1881, and $3.25, protest fees, and the costs of this action.

VANCISE, WILSON & MARTEN,
Att'ys for Pl'ff.

or the plaintiff will take judgment against you for five hundred dollars, with interest at 10 % per annum from June 18, 1881, besides costs and $3.25 protest fees.

Deadwood, D. T., April 29, 1882.

VANCISE, WILSON & MARTEN,
Plaintiff's Attorneys.

44 $500.00. DEADWOOD, DAKOTA, *June 18th*, 1882.

Ten months after date I promise to pay to the order of F. W. Dunton, cashier Corbin Banking Co., five hundred dollars, at Merchants' National Bank, Deadwood, Dakota, value received, with interest at 10 % per annum.

SETH BULLOCK.

[Written across the face in red ink:] No. 15685. Protested for non-payment April 21, 1882. A. J. Parshall, notary public. Judgment hereon August 14, 1882. Frank J. Washabaugh, clerk, by C. A. Moody.

(Endorsed on back:) Star & Bullock. F. W. Dunton, cash'r. R. C. Lake, president, or order. Jno. L. Farwell.

Protest.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

Be it remembered that on the day of the date hereof I, A. J. Parshall, a notary public in and for said county and Territory, duly commissioned and qualified, residing in said county, at the request of the First National Bank of Deadwood, D. T., holder of the original promissory note, which is hereto attached, presented the same to Seth Bullock, and to A. Fox, cashier of the Merchants' Nat. Bank, of Deadwood, where — is made payable, and demanded payment thereof, and was refused, no reason given; whereupon I, the said notary, at the request aforesaid, have this day protested,
45 and do hereby solemnly protest, against the said Seth Bullock, and against the endorsers thereof and all others concerned, for all exchange, re-exchange, interest, damages, and costs accrued and to accrue by reason of the non-payment thereof.

This done and protested at Deadwood, D. T., this 21st day of April, 1882.

And I, the said notary, do hereby further certify that on the same day and year above written due notice of the foregoing protest and non-payment was put by me in the post office at Deadwood, D. T., postage prepaid, directed as follows:

Notice for Seth Bullock, Deadwood, D. T.
Notice for Star & Bullock, "
Notice for F. W. Dunton, cash'r (care Jno. L. Farwell).
Notice for Jno. L. Farwell, Claremont, N. H.
Notice for —.

Each of the above-named places being the place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] A. J. PARSHALL,
Notary Public.

Fees: Protest and record, $2.00; 4 notices, 1; seal, 25 cents; postage, $3.25.

Filed August 14, 1882.

FRANK J. WASHABAUGH, *Clerk*,
By C. A. MOODY, *D'y.*

46 In the District Court of the First Judicial District of the Territory of Dakota, in and for Lawrence Co.

JOHN L. FARWELL, Pl'ff,

vs.

SETH BULLOCK, and SOL STAR, and SETH BULLOCK, Copartners, Doing Business as Star & Bullock.

The plaintiff complains of the defendants herein and alleges:

That on the 8th day of June, 1881, the defendant, Seth Bullock, at Deadwood, Lawrence county, D. T., made his certain promissory note in writing, dated on that day, whereby, for value received, he promised to pay F. W. Dunton, cashier Corbin Banking Company, the sum of five hundred dollars, ten months after date, at Merchants' National Bank, Deadwood, D. T., with interest thereon at the rate of ten per cent. per annum.

2. That at that time the defendants, Sol Star and Seth Bul-
47 lock, were copartners, doing business under the firm name and style of Star & Bullock, and as such copartners and by their firm name, Star & Bullock, endorsed and guaranteed the payment of said note by writing their said firm name upon the back of said note.

3. That immediately thereafter the defendants delivered the said note to the said payee.

4. That thereafter, before maturity, for value received, the said payee sold, assigned, and transferred the said note to this plaintiff.

5. That when said note became due the same was duly presented for payment at the Merchants' National Bank, Deadwood, D. T., the place where the same was made payable, and payment thereof then and there duly demanded, which was refused; whereupon the said note was then and there duly protested for non-payment, [of] all of which the defendants had due notice.

6. That said note became due before the commencement of this action, and remains wholly unpaid.

48 Wherefore plaintiff demands judgment against the defendants for five hundred dollars, with interest thereon at 10 % per annum since June 18, 1881, and $3.25, protest fees, and the costs of this action.

VANCISE, WILSON & MARTEN,
Att'ys for Pl'ff.

49 TERRITORY OF DAKOTA, } ss:
Lawrence County, }

John R. Wilson, being duly sworn, says he is one of the attorneys for plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true; that this action is based on a written instrument for the payment of money only and is in affiant's possession; that the reason that this verification is not made by the pl'ff is that he is a non-resident of and now absent from this Territory; that said note and letters from plaintiff are the sources of affiant's knowledge.

JOHN R. WILSON.

Subscribed and sworn to before me this 29th day of April, 1882.
[SEAL.] B. P. DAGNE,
Notary Public.

(Endorsed:) Filed Aug. 8, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep'y.

50 TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

S. M. Houghton, being duly sworn, says that he is 19 years of age and a resident of Lawrence county, D. T.; that he served the within summons and complaint on the within-named defendants, Seth Bullock and Sol Star, by delivering to and leaving each of them a true copy thereof—on Seth Bullock on the 4th day of May, A. D. 1882; on Sol Star on the 8th day of May, A. D. 1882, in Lawrence county, Dakota Territory—and that he knew the persons served to be the persons named in the within summons and complaint as the defendants therein.

S. M. HOUGHTON.

Subscribed and sworn to before me this 25th day of July, 1882.
[SEAL.] A. J. PARSHALL,
Notary Public.

51 *Answer.*

In the District Court of the First Judicial District.

JOHN L. FARWELL, Plaintiff,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock, Defendants.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Now come the said defendants, Seth Bullock and Sol Star and Seth Bullock, copartners as Star & Bullock, and for answer to the complaint of said John L. Farwell, plaintiff, say:

1. That they deny each and every allegation of the said complaint, except as hereinafter specifically admitted.

2. Said defendants admit that the defendant, Seth Bullock, executed and delivered the promissory note mentioned in the complaint, as maker thereof, to F. W. Dunton, cashier of the
52 Corbin Banking Company, which said last-named company is a corporation organized and existing under the laws of the State of New York, and which said note so made the defendants allege was the property of said Corbin Banking Company.

Admit that said note was endorsed by said firm of Star and Bullock at the time of its delivery to said Corbin Banking Company.

Admit that said note has not been paid, but deny that said plaintiff is the owner of said promissory note, or that the defendants, or either of them, are indebted to the said plaintiff thereon in any manner or in any sum of money.

3. Further answering said complaint, and as a defense thereto, the said defendants allege, upon information and belief, that the said plaintiff, John L. Farwell, is not an endorsee for value of said promissory note, is not the owner thereof, and is not the real party in interest in the action herein, but that the said Corbin Banking Company, a corporation organized under the laws of the State of New York, is the owner of said promissory note and the real party
53 in interest as plaintiff in the action herein; that the said plaintiff is an employee or agent of said Corbin Banking Company, and has no interest in said promissory note, except as such agent or employee for collection.

That the defendant, Seth Bullock, the maker of said note, has a counter-claim for damages against said Corbin Banking Company, arising out of a breach of contract between said company and said defendant, and that the action herein is prosecuted in the name of said John L. Farwell as plaintiff instead of in the name of said Corbin Banking Company, the real party in interest, in order to prevent the defendants from availing themselves of the benefit of such counter-claim against said Corbin Banking Company, and that the action herein is prosecuted for the benefit of said Corbin Banking Company.

Wherefore the defendants pray to be hence dismissed, with their costs.

McLAUGHLIN & STEELE,
Attorneys for Defendants.

54 TERRITORY OF DAKOTA, } *ss:*
Lawrence County, }

Seth Bullock, being first duly sworn, makes oath and says that he is one of the defendants named in the above-entitled cause; that he has heard read the foregoing answer, knows the contents thereof, and knows the same to be true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

SETH BULLOCK.

Subscribed and sworn to before me this 9th day of May, A. D. 1882.

JAMES S. MULLALY,
Notary Public.

(Endorsed:) Service admitted by copy. May —, 1882. Vancise, Wilson & Marten, att'ys for pl'ff. Filed May 29, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep'y.

55 In the District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

Now comes the plaintiff and demurs to the answer of defendants herein upon the ground that it appears upon the face of the said answer that the facts therein stated do not constitute a defense or counter-claim.

VANCISE, WILSON & MARTEN,
Attorneys for the Plaintiff.

(Endorsed:) Service by copy admitted this 22d day of July, A. D. 1882. McLaughlin & Steele, att'ys for defendants. Filed Aug. 8, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep.

56 In District Court of the First Judicial District of Dakota Territory, in and for the County of Lawrence.

JOHN L. FARWELL
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock.

This cause having been brought to trial on the issues of law joined therein, to wit, the demurrer of plaintiff to the answer of defendants, after hearing Messrs. Vancise, Wilson & Martin in support of said demurrer and Messrs. McLaughlin & Steele in opposition thereto, ordered that the said demurrer be, and the same is hereby, sustained, and that plaintiff have judgment thereon, but with leave to the defendants to amend their answer by the coming in of court on the morning of the 7th day of August, 1882.

Done this 1st day of August, A. D. 1882.

By the court:

P. C. MUDDY, *Judge.*

57 To which order and ruling of the court defendants, by their counsel, then and there excepted.

P. C. MOODY, *Judge.*

(Endorsed:) Filed Aug. 8, 1882. Frank J. Washabaugh, clerk, by C. C. Moody, dep'y.

58 Territory of Dakota, First Judicial District. In the District Court in and for Lawrence County.

JOHN L. FARWELL, Pl'ff,
vs.
SETH BULLOCK, & SOL STAR & SETH BULLOCK, Copartners as Star [&] Bullock, Def'ts.

The Territory of Dakota sends greeting to the above-named defendants:

You are hereby summoned and required to answer the complaint of the above-named plaintiff, which will be filed in the office of the clerk of the district court within and for said Lawrence county, at Deadwood, D. T., within thirty days after the service of these summons-, exclusive of the day of service, or the plaintiff will take judgment against you for five hundred dollars, with interest at 10 % per annum from June 18, 1881, besides costs and protest fees—3.25.

Deadwood, D. T., June 22d, 1882.

VANCISE, WILSON & MARTEN,
Plaintiff's Attorneys.

59 $500.00. DEADWOOD, DAKOTA, *June 18th*, 1881.

Twelve months after date I promise to pay to the order of F. W. Dunton, cashier Corbin Banking Company, five hundred dollars at Merchants' National Bank, Deadwood, Dakota, value received, with interest at 10 % per annum.

SETH BULLOCK.

[Written across the face in red ink:] Protest for non-payment June 22d, 1882. A. J. Parshall, notary public. Judgment herein Aug. 14, 1882. Frank Washabaugh, clerk, by C. Moody, dep'y.

(Endorsed on back:) Star [&] Bullock. F. W. Dunton, cash. R. C. Lake, president, or order. Jno. L. Farwell.

Protest.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

Be it remembered that on the day of the date hereof I, A. T. Parshall, a notary public in and for said county and Territory, duly commissioned and qualified, residing in said county, at the request of the 1st National Bank of Deadwood, D. T., holder of the original promissory note which is hereto attached, presented the same to Mer. Nat. Bank of Deadwood, Da., where [it] is made payable, and demanded payment thereof, and was refused for the reason
60 no instructions to pay; whereupon I, the said notary, at the request aforesaid, have this day protested, and do hereby solemnly protest, against the said Seth Bullock, and against the endorsers thereof and all others concerned, for all exchange, re-exchange, interest, damages, and costs accrued and to accrue by reason of the non-payment thereof.

This done and protested at Deadwood, D. T., this 22d day of June, 1882.

And I, the said notary, do hereby further certify that on the same day and year above written due notice of the foregoing protest and non-payment was put by me in the post office at Deadwood, D. T., postage prepaid, directed as follows:

Notice to Seth Bullock, } Deadwood.
Notice to Star & Bullock, }

Notice to F. W. Dunton, cash'r, care Jno. L. Farwell, Claremont, N. H.

Notice to Jno. L. Farwell, Claremont, N. H.

Notice for each of the above-named places being the place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] A. J. PARSHALL,
Notary Public.

Fees: Protest & record, $2.00; notices, 1.00; seal, 25 cents; postage, 10 cents—$3.35.

Filed August 14, 1882.

FRANK J. WASHABAUGH, *Clerk*,
By C. C. MOODY, *Dep'y.*

61 In the District Court of the First Judicial District of the Territory of Dakota, in and for Lawrence County.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners, &c., Doing Business as Star & Bullock.

The plaintiff complains of the defendants herein and alleges:

That on the 18th day of June, 1881, the defendant, Seth Bullock, at Deadwood, Lawrence county, D. T., made his certain promissory note in writing, dated on that day, whereby, for value received, he promised to pay F. W. Dunton, cashier Corbin Banking Company, the sum of five hundred dollars, twelve months after date, at Merchants' National Bank, Deadwood, D. T., with interest thereon at the rate of ten per cent. per annum.

2. That at that time the defendant-, Sol Star and Seth Bul-
62 lock, were copartners, doing business under the firm name and style of Star & Bullock, and as such copartners, and by their firm name of Star & Bullock, endorsed and guaranteed the payment of said note by writing their said firm name upon the back of said note.

3. That immediately thereafter the defendants delivered the said note to the said payee.

4. That thereafter, before maturity, for value received, the said payee sold, assigned, and transferred the said note to this plaintiff.

5. That when said note became due the same was duly presented for payment at the Merchants' National Bank, Deadwood, D. T., the place where the same was made payable, and payment thereof then and there duly demanded, which was refused; whereupon the said note was then and there duly protested for non-payment, [of] all of which the defendants had due notice.

6. That said note became due before the commencement of this action and remains wholly unpaid.

63 Wherefore plaintiff demands judgment against the defendants for five hundred dollars, with interest thereon at 10 % per annum since June 18, 1881, and $3.25 protest, fees, and the costs of this action.

VANCISE, WILSON & MARTEN,
Att'ys for Pl'ff.

64 TERRITORY OF DAKOTA, } ss:
Lawrence County, }

John R. Wilson, being duly sworn, says he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true; that this action is based on a written instrument for the payment of money only and is in affiant's possession; that the reason that this verification is not made by the pl'ff is that he is a non-resident of and now absent from this Territory; that said note and letters from plaintiff are the sources of affiant's knowledge.

JOHN R. WILSON.

Subscribed and sworn to before me this 23d day of June, 1883.

[SEAL.] A. J. PARSHALL,
Notary Public.

(Endorsed:) Filed August 8, 1882. Frank J. Washabaugh, clerk, by C. C. Moody, dep'y.

65 TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

S. M. Houghton, being duly sworn, says he is 20 years of age and a resident of Lawrence county, D. T.; that he served the within summons and complaint on the within-named defendants, Seth Bullock and Sol Star, by delivering to and delivering to and leaving with each of them a true copy thereof—on Seth Bullock on the 28th day of June, A. D. 1882; on Sol Star on the 22d day of June, A. D. 1882, in Lawrence county, Dakota Territory—and that he knew the persons served to be the persons named in the within summons and complaint as defendants therein.

S. M. HOUGHTON.

Subscribed and sworn to before me this 25th day of July, A. D. 1882.

[SEAL.] A. J. PARSHALL,
Notary Public.

66 *Answer.*

In District Court, First Judicial District.

JOHN L. FARWELL, Plaintiff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock, Defendants.

TERRITORY OF DAKOTA, *County of Lawrence:*

Now come the said defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners as Star and Bullock, and for answer to the complaint of said John L. Farwell, plaintiff, say:

1. That they deny each and every allegation of the said complaint, except as hereinafter specifically admitted.

2. Said defendants admit that *that* the defendant, Seth Bullock, executed and delivered the promissory note mentioned in
67 the complaint, as maker thereof, to F. W. Dunton, cashier of the Corbin Banking Company, which said last-named company is a corporation organized and existing under the laws of the State of New York, and which said note so made, the defendants allege, was the property of said Corbin Banking Company.

Admit that said note was endorsed by said firm of Star and Bullock at the time of its delivery to said Corbin Banking Company.

Admit that said note has not been paid, but deny that said plaintiff is the owner of said promissory note, or that the defendants, or either of them, are indebted to the said plaintiff thereon in any manner or in any sum of money.

3. Further answering said complaint, and as a defense thereto, the said defendants allege upon information and belief, that the said plaintiff, John L. Farwell, is not an endorsee for value of said promissory note, is not the owner thereof, and is not the real
68 party in interest in the action herein, but that the said Corbin Banking Company, a corporation organized under the laws of the State of New York, is the owner of said promissory note and the real party in interest as plaintiff in the action herein; that the said plaintiff is an employee or agent of said Corbin Banking Company and has no interest in said promissory note except as such agent or employee for collection.

That the defendant, Seth Bullock, the maker of said note, has a counter-claim for damages against said Corbin Banking Company arising out of a breach of contract between said company and said defendant, and that the action herein is prosecuted in the name of said John L. Farwell as plaintiff, instead of in the name of said Corbin Banking Company, the real party in interest, in order to prevent the defendants from availing themselves of the benefit of such

counter-claim against said Corbin Banking Company, and that the action herein is prosecuted for the benefit of said Corbin Banking Company.

69 Wherefore the defendants pray to be hence dismissed with their costs.

McLAUGHLIN & STEELE,
Attorneys for Defendants.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

Seth Bullock, being first duly sworn, makes oath and says that he is one of the defendants in the above-entitled cause; that he has heard read the foregoing answer, knows the contents thereof, and knows the same to be true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

SETH BULLOCK.

Subscribed and sworn to before me this 21st day of July, A. D. 1882.

[SEAL.] JAMES S. MULLALY,
Notary Public.

(Endorsed:) Service by copy admitted this 22nd of July, 1882. Vancise, Wilson & Martin, attorneys for plaintiff. Filed July 24th, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep.

70 In the District Court, First Judicial District of Dakota Territory, in and for Lawrence County.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

Now comes the plaintiff and demurs to the answer of defendants herein upon the ground that it appeared upon the face of the said answer that the facts therein stated do not constitute a defense or counter-claim.

VANCISE, WILSON & MARTEN,
Attorneys for Plaintiff.

(Endorsed:) Service by copy admitted this 31st day of May, A. D. 1882. McLaughlin & Steele, att'ys for defendants. Filed August 8, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep.

71 In District Court of the First Judicial District of Dakota Territory, in and for the County of Lawrence.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star and Bullock.

This cause having been brought to trial on the issues of law joined therein, to wit, the demurrer of plaintiff to the answer of defendants, after hearing Messrs. Vancise, Wilson & Marten, in support of said demurrer, and Messrs. McLaughlin & Steele, in opposition thereto:

Ordered, that the said demurrer be, and the same is hereby, sustained and that plaintiff have judgment thereon, but with leave to the defendants to amend their answer by the coming in of court on the morning of the 7th day of August, 1882.

Done this 1st day of August, A. D. 1882.

By the court:

G. C. MOODY, *Judge*.

To which order and ruling of the court defendants, by their counsel, then and there excepted.

G. C. MOODY, *Judge*.

(Endorsed:) Filed Aug. 8, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep.

72 In the District Court of the First Judicial District of Dakota Territory, in and for the county of Lawrence.

JOHN L. FARWELL

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock.

The four several actions entitled as above having been brought to trial upon the issue of law arising upon the complaint, answer, and demurrer to the answer in each of said actions, and it appearing to the court that the plaintiff is entitled to judgment upon his said demurrer, and the court having ordered judgment in his favor on the 1st day of August, 1882, in each of said actions, with leave of defendants to amend their answer by the coming in of court on the 7th day of August, 1882, and it further appearing that the defendants have failed to amend their answer in either of said causes within the time permitted, but elect in open court to stand upon said answers and each of them as served and filed, and the ruling of the court upon the demurrer thereto as aforesaid, and meantime, upon the
73 motion of defendants' counsel, the said four several causes of action having been by this court consolidated into one without prejudice to the pleadings on file therein and without requiring additional pleadings, but providing that the complaint, answer, and demurrer to the answer in said four several causes of action should be and constitute the pleadings in such consolidated

action and the issues there joined be the issues in such consolidated action, and the plaintiff having produced the four several promissory notes pleaded in his several complaints, now, on motion of Messrs. Vancise Wilson & Marten, counsel for plaintiff—

It is ordered, considered, and adjudged that the plaintiff, John L. Farwell, do have and recover of and from the defendants, Seth Bullock, and Sol Star and Seth Bullock, copartners, doing business under the firm name and style of Star & Bullock, the sum of two thousand two hundred and thirty-one dollars and sixty-five cents ($2,231.65), together with the further sum of twenty-two dollars and sixty-five cents, his cost expended, in all the sum of two thousand — and fifty-four dollars and thirty cents, and that he have execution therefor.

Done this 14th day of August, 1882.

By the court:

G. C. MOODY, *Judge.*

74 To which order rendering judgment the defendants, by their counsel, then and there excepts.

G. C. MOODY, *Judge.*

(Endorsed:) Filed August 14th, 1882, at 12 m. Frank J. Washabaugh, clerk, by C. A. Moody, dep'y.

75 In District Court of the First Judicial District.

JOHN L. FARWELL, Pl'ff,

vs.

SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners as Star & Bullock, Def'ts.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

I, Gideon C. Moody, associate justice supreme court of Dakota Territory and presiding judge of the above-entitled court, do hereby certify that the foregoing papers, to wit, the four summons-, four complaints, four original promissory notes, with protest attached, four answers of defendants, four demurrers to said answers, and orders sustaining the same, notice and motion to consolidate said four actions, with the affidavits attached, the order of court consolidating the said four actions, and the judgment and decree rendered in such consolidated action, with all entries and filings thereon, are contained in and constitute the judgment roll in said above-entitled action and the whole thereof.

GIDEON C. MUDDY, *Judge.*

(Endorsed:) Filed Sept. 1, 1882. Frank J. Washabaugh, clerk, by C. A. Moody, dep'y.

76 TERRITORY OF DAKOTA, } *ss:*
Lawrence County, }

I, Frank J. Washabaugh, clerk of the district court of the first judicial district of Dakota Territory, in and for Lawrence county, do hereby certify that the above and foregoing is a full, true, correct,

and complete transcript and copy of and from the notice of appeal and proof of service thereof, of the judgment roll, and of the certificate of the judge in the above-entitled action, wherein John L. Farwell is plaintiff, and Seth Bullock, and Sol Star and Seth Bullock, copartners as Star & Bullock, are defendants, as the same now remains of record in said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this September 2d, 1882.

[SEAL.] FRANK J. WASHABAUGH, *Clerk*,
By C. A. MOODY, *Dep'y*.

77 Be it remembered that on this 5th day of October, A. D. 1882, it being the 3d day of term, U. S. Supreme Court—present, Hon. A. J. Edgerton, chief justice; G. C. Moody, associate; J. P. Kidder, associate; J. A. Hudson, associate; H. J. Campbell, U. S. attorney; Harrison Allen, U. S. marshal; Warren Osburn, crier; Henry W. Edgerton & C. Morris, bailiff-, and B. S. Williams, clerk—court being duly opened, the following proceedings were had:

Appeal to the District Court of 1st Judicial District.

JOHN L. FARWELL, Respondent,
vs.
SETH BULLOCK & SOL STAR, as Star and Bullock, Appellant-. } N-. 126. N-. 127.

And now this 5th day of October, 1882, the foregoing causes, Nos. 126 & 127, coming on for argument and hearing, together with the consent of counsel and the permission of the court, D. Mc-
78 Laughlin, Esq., appearing for the appellant in each case and Edward Vancise, Esq., *contra*.

Appeal from the District Court of First Judicial District.

And now this 6th day of October, A. D. 1882, and the 4th day of the term.

JOHN L. FARWELL, Respondent,
vs.
STAR & BULLOCK, Appellant. } N-. 126 & 127.

Now comes D. McLaughlin, Esq., with the closing argument for said appellants, and thereupon cause submitted to the court.

79 In the Supreme Court of Dakota Territory.

JOHN L. FARWELL, Pl'ff & Resp't,
vs.
SETH BULLOCK *et al.*, Def'ts & Appellants. } No. 127.

Bill of costs and disbursements by respondent:

To printing brief..... $24 00

TERRITORY OF DAKOTA, }
Yankton County, } *ss*:

Edwin Vancise, being duly sworn, says he is one of the counsels for respondent in the above-entitled cause; that the above statement

is a true and correct account of respondent's disbursements made in this action and incurred, and which, as affiant verily believes, respondent is entitled to have taxed as costs in his behalf if the judgment of the court below be affirmed.

EDWIN VANCISE.

Subscribed and sworn to before me this 5th day of October, 1882.
[SEAL.] B. S. WILLIAMS, *Clerk.*

80 In Supreme Court of Dakota Territory.

JOHN L. FARWELL, Pl'ff & Resp't,
vs.
SETH BULLOCK *et al.*, Def'ts & Appellants. } N-. 127.

Please take notice that on the accompanying affidavit the undersigned will, in case the judgment in this cause be affirmed, which was rendered in the court below, and upon the entry of the judgment of affirmance, here ask the clerk to tax in such judgment the sum of $24 as respondent's costs on this appeal.

Yankton, D. T., Oct. 5, 1882.

VANCISE, WILSON & MARTEN.

Service admitted without prejudice Oct. 5, 1882.

McLAUGHLIN & STEELE,
Att'ys for Appellants.

Filed Oct. 6, 1882.

B. S. WILLIAMS, *Clerk.*

81 *Appeal from the District Court of Lawrence County.*

In the Supreme Court. October Term, 1882.

JOHN L. FARWELL, Plaintiff & Respondent,
vs.
SETH BULLOCK & SOL STAR, Defendants & Appellants.

THE UNITED STATES OF AMERICA, }
Territory of Dakota, } *ss:*

This action coming on to be heard at the October, A. D. 1882, term of said supreme court, at the supreme court room, in the city of Yankton, D. T.—present, A. J. Edgerton, chief justice, and G. C. Moody, J. P. Kidder, and S. A. Hudson, associate justices—and the appeal herein having been argued by D. McLaughlin for the appellants, and by Edwin Vancise for the respondent, and the court having advised thereon, it is now here considered, ordered, and adjudged that the judgment of the said district court within and for said Lawrence county, appealed from herein, be, and the same is hereby, in all things affirmed by operation of law.

And it is further ordered that this cause be, and it is hereby, remanded to the district court for further proceedings according to law and the judgment of this court.

And it is further considered and adjudged that the pl'ff & respondent have and recover of the def'ts & appellants his costs and disbursements on this appeal expended, taxed and allowed at —.

By the court:

A. J. EDGERTON,
Chief Justice Supreme Court, D. T.

Chief Justice Edgerton & Justice Hudson, for reversal; Justices Moody & Kidder, for affirmance.

Filed this 14th day of October, 1882.

B. S. WILLIAMS, *Clk.*

82 [Endorsed:] In supreme court, Territory of Dakota. October term, 1882. John L. Farwell, plaintiff & respondent, *vs.* Seth Bullock and Sol Star, defendants & appellants. Filed this 14 day of October, 1882. B. S. Williams, clerk.

83 *Consolidate Case.*

JOHN L. FARWELL *vs.* STAR & BULLOCK.

Upon motion of counsel for the defendants & appellants, and by consent of pl'ff's counsel, ordered that the remittitur in this case be stayed for sixty days from this date, to enable defendants to perfect appeal or writ of error to the U. S. Supreme Court, if they shall be so advised.

October 14th, 1882.

By the court: A. J. EDGERTON,
Chief Justice.

84 UNITED STATES OF AMERICA, *ss:*

To John L. Farwell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1883, pursuant to an appeal filed in the clerk's office of the supreme court of the Territory of Dakota, wherein Seth Bullock, and Sol Star and Seth Bullock, copartners, doing business as Star and Bullock, are appellants, and you are respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

A. J. EDGERTON,
Chief Justice of the Supreme Court of the Territory of Dakota.

85 [Endorsed:] In supreme court. John L. Farwell *vs.* Seth Bullock *et al.* Citation. Filed December 30, 1882. B. S. Williams, clerk. Service of a true copy of the within acknowledged Dec. 23, 1882. Vancise & Wilson, att'y- for respondent.

86 *Affidavit of Value of Matter in Dispute.*

In the Supreme Court.

JOHN L. FARWELL, Respondent,

vs.

SETH BULLOCK, and SOL. STAR and SETH BULLOCK, Copartners Doing Business as Star & Bullock, Appellants.

TERRITORY OF DAKOTA, } *ss:*
County of Lawrence, }

Seth Bullock, being first duly sworn, makes oath and says that he is one of the appellants in the above-entitled action, over twenty-one years of age, and is acquainted with the matter in dispute in said action and the value thereof; that the value of the matter in dispute, exclusive of costs, exceeds the sum of one thousand dollars, to wit, the sum of two thousand two hundred and thirty-one $\frac{65}{100}$ dollars, with interest thereon since August 14th, A. D. 1882,
87 by virtue of the judgment rendered in said above-entitled action in favor of said respondent and against said appellants.

[SEAL.] SETH BULLOCK.

Filed this 12 day of December, 1882.

B. S. WILLIAMS, *Clerk.*

88 *Certificate of Clerk as to Bondsmen.*

In Supreme Court.

JOHN L. FARWELL, Respondent,

vs.

SETH BULLOCK *et al.*, Appellants.

Filed December 12, 1882.

B. S. WILLIAMS, *Clerk.*

89 In the Supreme Court of the Territory of Dakota, *ss:*

JOHN L. FARWELL, Respondent,

vs.

SETH BULLOCK, and SOL. STAR and SETH BULLOCK, Copartners Doing Business as Star & Bullock, Appellants.

I hereby certify that I am well acquainted with Alvin Fox and Harris Franklin, sureties on the bond on appeal to the Supreme Court of the United States in the above-entitled cause; that each of them is a freeholder and resident of this county and Territory, and I consider each of them worth the amount for which he has qualified in said bond over and above all his debts, liabilities, and exemptions allowed by law, and that they are amply good and sufficient sureties on said bond on appeal.

Witness my hand & seal of the dist. court this 2d day of December, A. D. 1882.

[SEAL.] FRANK J. WASHABAUGH,
Clerk First Dist. Court, D. T.

90 *Bond on Appeal.*

Supreme Court of the United States.

JOHN L. FARWELL, Respondent & Appellee,
vs.
SETH BULLOCK, and SOL STAR and SETH BULLOCK, Copartners Doing Business as Star & Bullock, Appellants.

Know all men by these presents that we, Seth Bullock, Sol Star, Alvin Fox, and Harris Franklin, of the county of Lawrence, Territory of Dakota, are held and firmly bound unto John L. Farwell, of Claremont, in the county of Sullivan and State of New Hampshire, in the sum of five thousand (5,000.00) dollars, to be paid to the said John L. Farwell, his executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and one and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 28th day of November, A. D. 1882.

91 Whereas the above-named Seth Bullock, and Sol Star and Seth Bullock, copartners [as] Star and Bullock, have appealed to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the Territory of Dakota on the 14th day of October, A. D. 1882:

Now, therefore, the condition of this obligation is such that if the above-named Seth Bullock, and Sol Star and Seth Bullock, copartners doing business as Star and Bullock, shall prosecute their said appeal to effect, and answer all costs and damages, including just damages for delay and costs and interest on the appeal, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

SETH BULLOCK. [SEAL.]
SOL STAR. [SEAL.]
ALVIN FOX. [SEAL.]
HARRIS FRANKLIN. [SEAL.]

Signed and delivered in presence of—
J. MULLALY.
WILLIAM B. STEELE.

TERRITORY OF DAKOTA, } ss:
County of Lawrence, }

92 On this 2d day of December, A. D. 1882, personally appeared before the undersigned, clerk of court, Seth Bullock, Sol Star, Alvin Fox, and Harris Franklin, well known to me to be the persons described in & who executed the foregoing bond, and each duly acknowledged to me that they executed the same for the uses and purposes therein expressed.

Witness my hand and the seal of said court the day and year last above written.

[SEAL.] FRANK J. WASHABAUGH, *Clerk.*

UNITED STATES OF AMERICA, }
Territory of Dakota, County of Lawrence, } *ss:*

Alvin Fox and Harris Franklin, being duly sworn, depose and say, and each for himself says, that he is worth the sum of five thousand dollars over and above his just debts and liabilities in property not exempt from execution, and is a resident and householder in said county of Lawrence.

ALVIN FOX.
HARRIS FRANKLIN.

Sworn to before me this 2d day of December, A. D. 1882.

[SEAL.] FRANK J. WASHABAUGH, *Clerk.*

93 I approve the above bond and the sufficiency of the surety thereto this 12th day of December, A. D. 1882.

A. J. EDGERTON,
Chief Justice of the Supreme Court of the Territory of Dakota.

Filed this 12 day of December, 1882.

B. S. WILLIAMS, *Clerk.*

94 *Notice of Appeal.*

In the Supreme Court of the Territory of Dakota.

JOHN L. FARWELL, Respondent,
vs.
SETH BULLOCK, and SOL. STAR and SETH BULLOCK, Copartners, Doing Business as Star & Bullock, Appellants.

The above-named Seth Bullock, and Sol. Star and Seth Bullock, copartners, doing business as Star & Bullock, appellants, conceiving themselves aggrieved by the final judgment entered on the fourteenth day of October, A. D. 1882, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record, proceedings, bill of exceptions, etc., in the said cause, duly authenticated, may be sent to the Supreme Court of the United States.

McLAUGHLIN & STEELE,
Attorneys for Appellants.

95 The appeal in the foregoing case is allowed, and the clerk of the supreme court of the Territory of Dakota will transmit the record and proceedings in said cause, as prayed, to the Supreme Court of the United States.

Yankton, Dakota, December 12th, A. D. 1882.

A. J. EDGERTON,
Chief Justice of the Supreme Court of the Territory of Dakota.

Filed this 12 day of December, 1882.

B. S. WILLIAMS, *Clerk.*

96 In Supreme Court.

TERRITORY of DAKOTA:

I, B. S. Williams, clerk of the supreme court for the Territory of Dakota, do hereby certify that the foregoing pages of manuscript are and contain in themselves a full, true, and correct copy of the original transcript on appeal from the district court in and for the first judicial district to this court upon which said cause was heard and determined in this court, wherein John L. Farwell is plaintiff and respondent and Starr & Bullock are defendants and appellants, of the proceedings and judgment entered in this court in the case, and of the undertaking on appeal to the Supreme Court of the United States, and the original citation issued out of this court, with service duly attached thereto, as the same remains of record in said cause in this court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 24th day of September, 1883.

[Seal Supreme Court of Dakota Territory.]

B. S. WILLIAMS, *Clerk.*

Endorsed on cover: Dakota Territory supreme court. No. 176. Seth Bullock, and Sol Star and Seth Bullock, copartners, doing business as Star & Bullock, appellants, *vs.* John L. Farwell. Filed 16th October, 1883.

122-642

Office Supreme Court U. S.
FILED.
DEC 13 1886
JAMES H. McKENNEY.
CLERK.

BRIEF OF APPELLANTS.

IN THE SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1886.

No. 176.

Seth Bullock, and Sol Star and Seth Bullock, co-partners, etc., in trueness as Star & Bullock. — **Appellants,**

vs.

John L. Farwell, — **Appellee.**

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF DAKOTA.

DANIEL McLAUGHLIN AND WILLIAM R. STEELE,
Attorneys for Appellants.

THE TIMES STEAM PRINTING HOUSE, DEADWOOD.

IN THE SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1886.

Seth Bullock, and Sol Star and Seth Bullock, co-partners, etc., in business as Star & Bullock. — Appellants,

vs.

John L. Farwell, — Appellee.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF DAKOTA.

Brief of Appellants.

STATEMENT OF THE CASE.

This action commenced in the District Court of the First Judicial District of the Territory of Dakota, within and for the County of Lawrence, wherein John L. Farewell, was plaintiff, and Seth Bullock, et al., were defendants, was instituted as four separate actions, upon four promissory notes, alleged in the complaints to have been made by the defendant, Seth Bullock, and endorsed by defendants Star & Bullock, before delivery, payable

to the order of F. W. Dunton, Cashier of the Corbin Banking Company, delivered to said payee, and by him, before maturity, for value, endorsed and transferred to the plaintiff; that said notes were unpaid, had been duly protested, &c., &c.

Record, pp. 6-7-13-19-24-25.

The answers of defendants to the first two of said complaints admitted the making, endorsement and delivery of the notes therein mentioned to F. W. Dunton, Cashier of the Corbin Banking Company, which was alleged to be a corporation organized under the laws of the State of New York.

Admitted that said notes had not been paid to the plaintiff, but denied that plaintiff was the owner of said notes, or that defendants, or either of them, were indebted to the plaintiff thereon in any manner or in any sum.

Denied each and every allegation of said complaints, except as hereinbefore stated.

Further answering, defendants alleged on information and belief, that the plaintiff, John L. Farwell, was an agent or employee of said Corbin Banking Company, and had no interest in said promissory notes except as such agent or employee, and that the said Corbin Banking Company, was the owner of said promissory notes sued upon and the real party in interest in said actions.

Further answering, as a defense and counter-claim, defendants alleged, that defendant, Seth Bullock, the maker of said promissory notes, had a counter-claim for damages for breach of contract against said Corbin Banking Company, arising out of a contract of employment alleged and set out in the answers.

Record, pp. 8-9-14-15.

The answers in the two last cases were substantially similar, except that instead of setting up the counter-claim, they alleged, that the notes mentioned in the complaints were sued in the name of the plaintiff to prevent the defendants availing themselves of a counter-claim for damages for breach of contract claimed by defendant, Seth Bullock, the maker of said notes, against the Corbin Banking Company, the owner of said notes.

Record, pp. 20-21-26-27

To these answers the plaintiff demurred for the reason that said answers did not state facts sufficient to constitute a defense to the actions, &c.

Record, pp. 10-16-22-27

The said four several actions were by order of the Court consolidated, the original pleadings to stand as the pleading in such consolidated action.

Record, pp 4-5.

The demurrers of plaintiff to the answers of defendants were by the Court sustained, and judgment ordered thereon.

To which defendants duly excepted.

Record, p. 28.

Defendants electing to stand on their answers, judgment was rendered in said consolidated action in favor of the plaintiff and against the defendants.

To which defendants duly excepted.

Record, pp. 28–29.

The defendants duly prosecuted their appeal to the Supreme Court of the Territory of Dakota, where the judgment of the District Court was affirmed by operation of law, the Court consisting of four justices, two of whom were for reversal, and two, including the justice who gave the judgment below, for affirmance.

Record, pp. 31-32.

From the judgment of the Supreme Court of the Territory, appellants prosecute their appeal to the Supreme Court of the United States.

ASSIGNMENT OF ERRORS.

1. That the District Court of the First Judicial District of the Territory of Dakota, within and for the County of Lawrence, erred in sustaining the demurrers of the plaintiff, now appellee, to the answers of the defendants, now appellants, and giving judgment thereon.

2. That the said District Court erred, in rendering judg-

ment in favor of said plaintiff, now appellee, and against said defendants, now appellants.

3. That the Supreme Court of the Territory of Dakota, erred in affirming the judgment of said District Court.

BRIEF FOR APPELLANTS.

The action was instituted to recover upon promissory notes, alleged in the complaint to have been made by appellant, Seth Bullock, to F. W. Dunton, Cashier Corbin Banking Company, and endorsed before delivery by appellants, Star & Bullock, which notes were alleged to have been sold, assigned and transferred by said payee to the appellee, John L. Farwell, before maturity.

The answer denied each and every allegation of the complaint except as therein stated.

Admitted the making, endorsement, and delivery to the payee for the Corbin Banking Company.

Denied that the plaintiff was the owner of said promissory notes.

Alleged that the notes were made to one F. W. Dunton, Cashier of the Corbin Banking Company, and were the property of said Company, which was the real party in interes . And in reference to two of the notes, alleged that the actions were prosecuted in the name of the plaintiff to prevent the assertion of a counter-claim by defendant, Seth Bullock, against the Corbin Banking Company, the owner of said notes.

The answer put in issue the endorsement to and title of appellant—and raised a material issue, without proof upon which appellee was not entitled to recover.

Metropolitan Bank vs. Lord, 1 Abbott's Practice, 186.
Chadwick vs. Booth, 13 Abbott's Practice, 251.

The Code of Civil Procedure of Dakota, provides: (Section 118). "The answer of the defendant must contain:

1. A general or specific denial of each material allegation

of the complaint controverted by the defendant, or any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counter-claim, in ordinary and concise language, without repetition."

The answer was sufficient to raise the issue of endorsement to and title of appellant,

Burley vs. German-American Bank, 111 U. S., 216.

The demurrer admitted the facts alleged, yet the court sustained the demurrer, and said: Admitting the facts to be true, they constitute no defense to the action.

We confess that it is the enunciation of a doctrine new to us, that a plaintiff suing as an endorsee of a promissory note payable to a payee or order, whose title and ownership is denied, can recover on the pleadings without proving the endorsement and assignment to him and his consequent title, but such is the new proposition of law laid down in the case.

The question presented is one of law arising upon the pleadings, and not one of the effect of the possession of a negotiable promissory note, as evidence of title, *prima facie*, or otherwise. If an endorsee, of a promissory note, whose title by endorsement is denied, can recover in an action upon such note without proof of endorsement and title, then the action of the court below in sustaining the demurrer to the answer can be sustained, otherwise the order and decision of the Court was erroneous.

In an action by an endorsee against the drawer or acceptor of a bill, or the maker of a note, the endorsement of the payee must be proved, and is a material issue.

Parsons on Bills and Notes, p. 485, Edition 1868.
Crogan, et al. vs. Ruckle, 1 California, 158.
Youngs vs. Bell, 4 Cal., 202.
Hastings vs. Dollarhide, 18 Cal., 391.
Mahe vs. Reynolds, 38 Cal., 561.
Blakely vs. Grant, 6 Mass., 386.
Davidson vs. Hutchins, 1 Hilton, (N. Y.), 123.
Sherman, et al. vs. Bushnell, 7 Howard Pr., 171.
Flood vs. Reynolds, et al., 13 Howard Pr., 112.
Brown vs. Ryckman, 12 Howard Pr., 316.
Chadwick vs. Booth, 13 Abbott Pr., 251.
Hayes vs. Hathorne, et al., 74 New York, 486.

ing the notes, for if judgment was warranted by the pleadings, no proof was required, and if proof was required, then none was given of endorsement and delivery to the appellee. The demurrer admits that the plaintiff is not an assignee of the note sued upon, is not the real party in interest in the action, but the Corbin Banking Company, is the owner of the note and the real party in interest.

It will be in order to consider the question as to the character of the interest which will enable an assignee of a negotiable note to maintain an action upon it, when that question shall be presented.

The only question this court has to deal with is this: Was the plaintiff entitled to recover upon demurrer to the answer?

It is respectfully submitted that he was not, that the judgment of the court below was error, and that said judgment should be reversed by the court.

DANIEL McLAUGHLIN AND
WILLIAM R. STEELE,
Attorneys for Appellants.

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BRIEF OF RESPONDENT'S COUNSEL.

IN THE SUPREME COURT

OF THE UNITED STATES.

October Term, 1886.

No. 176.

SETH BULLOCK ET AL.,
Appellants,
vs.
JOHN L. FARWELL,
Respondent.

VAN CISE & WILSON AND J. W. SMITH,
FOR RESPONDENTS.

THE TIMES STEAM PRINTING HOUSE, DEADWOOD.

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JOHN L. FARWELL,
Respondent.

VAN CISE & WILSON and J. W. SMITH, For Respondent,
McLAUGHLIN & STEELE, For Appellants.

BRIEF OF RESPONDENT'S COUNSEL.

The questions involved in this controversy arise under the Code of Civil Procedure in force in Dakota Territory. Four actions were originally begun by John L. Farwell, as plaintiff, on four separate promissory notes of $500.00 each, executed by the apellant, Seth Bullock, as maker, to F. W. Dunton, Cashier Corbin Banking Company, and endorsed before delivery by

the firm of Star & Bullock, (who were made co-defendants in the action) and endorsed before maturity by F. W. Dunton, Cashier. The notes were dated on the same day, June 18th, 1881, but matured at different dates, hence the bringing of the separate actions. The complaint in each action was in the ordinary form of a declaration on promissory note by the indorsee. Separate answers were filed in each case,—the answers in cases Nos. 1 and 2 being alike, and the answers in cases Nos. 3 and 4 alike, but the form of answer in the two latter cases differing from those in the two former, as we shall indicate hereafter. In each of the cases, the plaintiff, by his counsel, demurred to the answer on the ground that the facts stated therein did not constitute a defence or counter claim. This demurrer was sustained in each instance, and the defendants electing to plead no further, but stand upon their answer and the ruling on the demurrer, judgment was ordered accordingly. Thereafter, on the application of the defendants, the four cases were consolidated without new pleadings,—the four complaints, answers, demurrers and orders therein to constitute the pleadings and proceedings in the consolidated action,—and judgment was rendered accordingly for the whole of the amount claimed in the four several actions, with interest, protest fees and costs. The notes with the certificates of protest were introduced in evidence, and made a part of the judgment roll, and appear as a part of the record here.

For the purpose of this argument, in reviewing this judgment and the correctness and propriety of its rendition by the trial Court, we shall contend at the outset that the pleadings must be construed as a whole; that is, the four complaints must be taken together: if weakness be found in one it affects the whole; and the four answers together, the defects in any one affecting the

other, and supporting the order of the Court, sustaining the demurrer. In other words, we contend that the defendants below, the appellants here, by consolidating these four actions into one give us the benefit of any weakness or defect in any one of such answers, making it subject to demurrer, for the purpose of sustaining and upholding the judgment of the Court below.

Now let us see what the pleadings were: As we have said before the plaintiff Farwell declared in each action as indorsee upon a straight promissory note, executed by Seth Bullock, and indorsed before delivery by the firm of Star & Bullock, joined as defendants by their individual names. Under our statute (Civil Code, sec. 1845) Star & Bullock were bound as indorsers, and no question was raised about their liability. The answers in cases Nos. 1 and 2 denied each and every allegation of the complaint, "except as hereinafter stated." They then proceeded to admit the execution of the note by the defendant, Seth Bullock, and its delivery to the payee Dunton, Cashier of the Corbin Banking Company, a corporation organized under the laws of New York; that the note was endorsed by the firm of Star & Bullock at the time of its delivery; and that the note had not been paid to the plaintiff; but denied that plaintiff was the owner of the note, or that defendants, or either of them were indebted thereon to the plaintiff in any manner or in any sum. Further answering, and as a defense, they alleged, on information and belief, that the plaintiff, John L. Farwell, was an employe or agent of the Corbin Banking Company, at New York, and had no interest in the note, except as such employe or agent, and that the Corbin Banking Company was the owner of the note mentioned, and the real party in interest in the action. Further answering the complaint, and as a so-called defense and counter-claim, the defendants alleged that the defendant,

Bullock, had a cause of action against the Corbin Banking Company on account of a breach of contract of employment, as agent, in the year 1877, by which said defendant, Bullock, was injured in the sum of $3,000.00. The contract is stated to have been one employing Bullock to act as agent for said company in the purchase of county warrants of the Counties of Lawrence, Pennington and Custer, when such warrants could be obtained at prices deemed reasonable and profitable, the Corbin Banking Company obligating itself to furnish the money to said Bullock necessary and requisite to be used in the purchase of the warrants of said counties, and to pay him, as a compensation for such service, one-third of the profit arising from the purchase of the warrants of said counties. It was further stated that Bullock was at all times ready to perform the contract on his part prior to the commencement of this action, and offered to perform the same, but that the Corbin Banking Company neglected and failed to furnish the money needed in purchasing the warrants of said counties. That from the time of the making of said contract until the first of January, 1879, there was a large number of the warrants of Lawrence county issued, which Bullock could have purchased in open market and from private owners thereof for thirty-five cents on the dollar, to-wit: about the amount of $100,000.00, on which the Corbin Banking Company could have made a reasonable profit of $10,000.00 before the commencement of this action, and of which Bullock would have been entitled to one-third, or about the sum of $3,300.00. That the said Corbin Banking Company made a breach in said contract by refusing to furnish Bullock with the money necessary to purchase said warrants, by reason of which he was injured in the sum of $3,000.00. Wherefore, plaintiffs prayed that the Corbin Banking Company might be adjudged the real party in interest, as plaintiff in the action, and

that defendant Bullock might have judgment against it for $3,000.00 damages, less the amount of the note mentioned in the complaint, and interest.

The answer to the second action was of the same character as the first, as we have before stated, but to the third and fourth it was somewhat different. In these, the defendants denied each and every allegation of the complaint, "except as hereinafter specifically admitted." They then proceeded to admit the execution of the note by the defendant, Bullock; its delivery to the payee Dunton, Cashier of the Corbin Banking Company, a corporation, and which note, so made, the defendants alleged was the property of said Corbin Banking Company; admit that said note was endorsed by the firm of Star & Bullock at the time of its delivery; admit tha said note has not been paid, but deny that said plaintiff is the owner of it, or that the defendants, or either of them, are indebted to said plaintiff thereon in any manner or in any sum of money. Further answering, the defendants alleged that Farewell was not an indorsee for value of said promissory note, was not the owner thereof, and not the real party in interest in the action, but that the Corbin Banking Company, a corporation, was the owner of the note and the real party in interest, as plaintiff in the action herein, and the plaintiff Farwell an employe or agent of said Corbin Banking Company, having no interest in said promissory note, except as such agent or employe for collection. Instead of stating their so-called counter-claim, as in their other answers, they followed with a short paragraph, alleging that the defendant Bullock had a counter-claim for damages against the Corbin Banking Company, arising out of a breach of contract between the said Company and said Bullock, and that the action was prosecuted in the name of Farwell as plaintiff, instead of the Corbin Banking Company,

in order to prevent the defendants from availing themselves of the benefit of such counter-claim against the Corbin Banking Company, and that the action was prosecuted for the benefit of said Corbin Banking Company; and then instead of praying for a judgment for $3,000.00, as in the other cases, they prayed to be dismissed with their costs.

If our position be incorrect that by the consolidation of pleadings on appellant's motion, the respondent may take advantage of the answer most vulnerable to demurrer, for the purpose of sustaining the judgment, then another conclusion is it seems to us inevitable from the consideration of these answers separately, and that is that there are four appeals here, each for less than $1.000, and that that deprives this Court of jurisdiction.

The specific points of objection to the answers are: (1) The general denial is so qualified by the admissions and affirmative averments as to reduce it to insufficiency as a defense; (2) the so-called counter-claim of Bullock is not stated as a good cause of action, and (3) it can not exist as a counter-claim in this action because the party alleged to be liable is not a party to the action. Treating these propositions in their inverse order:

I.

Section 119 of the Dakota Code of Civil Procedure prescribes the requisites of a counter-claim. It "must "be one existing in favor of a defendant, and against a "plaintiff between whom a several judgment might be "had in the action." That is not the case here, as the counter-claim pleaded and judgment prayed is against the Corbin Banking Company.

The provisions of another section of the Code of Civil Procedure, (75) do not apply: "In the case of an

"assignment of a thing in action, the action by the as-
"signee shall be without prejudice to any set-off or
"other defense existing at the time of, or before notice
"of the assignment; but this section shall not apply to
"a negotiable promissory note or bill of exchange,
"transferred in good faith and upon good considera-
"tion, before due."

This only allows the matter to be used defensively. The distinction is clearly stated by Mr. Pomeroy in his Remedies and Remedial Rights, Sec. 155: "It is im-
"portant that the defenses which this clause admits
"should be carefully distinguished from the counter-
"claim subsequently provided for by the statute. This
"section speaks of *defenses* which, as they ask no
"affirmative relief, and simply prevent the plaintiff from
"succeeding, may be made available against an as-
"signee as well as against the original creditor. The
"counter-claim is more than a defense: it as-
sumes a right of action against, and demands a
"recovery of affirmative relief from the plaintiff in the
"suit, and is, therefore, impossible as against an as-
"signee suing, if it existed against the assignor." See also same work, secs. 167, 752, and cases cited.

II.

But if it be urged that this counter-claim is only pleaded with the allegation that plaintiff is not the real party in interest, as a defense in bar of his recovery, we answer, the counter-claim does not state a good cause of action, and therefore is not a good defense here, as it would not be a good counter-claim against the alleged real party.

A counter-claim must be a cause of action. In other words, the facts must be such that they would constitute the entire matter proper and necessary to be set forth in the complaint or petition, if the defendant had

chosen to institute an independent action between himself as plaintiff and the plaintiff as defendant. Pomeroy's Remedies, sec. 738.

Is there a good cause of action stated here? The counter-claim alleges a contract of employment by which Bullock was engaged to act as the agent of the Corbin Banking Company in the purchase of county warrants in the counties of Lawrence, Pennington and Custer when such warrants could be obtained at prices deemed reasonable and profitable; that the Company would furnish the money wherewith to purchase the warrants, and pay Bullock as compensation for services in such purchasing the one-third of the profits arising from the purchase; that Bullock was at all times ready and willing to perform the contract on his part prior to the bringing of this action, but that the Company neglected and failed to furnish the money needed in purchasing warrants; that from the time of making the contract of employment (July 10th, 1877) until January 1st, 1879, there was a large amount of the warrants of Lawrence county issued which Bullock could have purchased for thirty-five cents on the dollar, to-wit: about the amount of one hundred thousand dollars, upon which, the Corbin Banking Company could hava made a reasonable profit of ten thousand dollars, and Bullock as his one-third share about the sum of three thousand three hundred dollars; that the Corbin Banking Company made breach of its contract by neglecting, failing and refusing to furnish Bullock with the money necessary to purchase warrants, as agreed, and by reason of such breach, Bullock was damaged in the sum of $3,000.00. Then follows a prayer that defendant, Bullock, have judgment against the Corbin Banking Company for $3,000.00, less the amount due on the note mentioned in the complaint.

Now is there anything in all this giving Bullock a

right of action against the Corbin Banking Company? He by his own statement of it "was employed to act "as the agent of said Company in the purchase of coun- "ty warrants * * * *when such warrants could be "obtained at prices deemed reasonable and profitable.*" Who was to be the judge of this, the principal or the agent, the party furnishing the money, or the party investing it? In this issue, between principal and agent, involving a special and particular agency, no powers will be implied, and construing the pleading most strongly against the pleader, it must be presumed, and this demurrer only confesses, that the defendant Bullock was employed to purchase these warrants when they could be obtained at prices deemed reasonable and profitable by the Corbin Banking Company. No allegations follow showing that they even declared or deemed thirty-five cents or any other price reasonable and profitable, and hence no breach is pleaded.

Again, this was a contract of employment, having no specified term and could therefore be terminated at the will of either party on notice to the other (Dakota Civil Code, section 1152). Bullock himself alleges its termination by charging that the company failed, neglected and refused to furnish the necessary funds.

Did the employment really ever begin? Or was it a contract to form a partnership, the company to furnish the funds and Bullock to do the work for one-third the profits? Then was not advancing the money a condition precedent, and a failure to advance it a failure to form the partnership? And who can tell but that there might have been losses instead of profits? Who was to decide when to sell? And if there had been losses there seems to have been no provision for dividing these. It can not then be construed as a contract to form a partnership, because each

party must in such an agreement in some way share the losses as well as the profits. This is familiar law.

Or is this an attempt to plead an agency with commission as compensation? Then it was revocable at any time by the principal unless the agent's power was coupled with an interest in the subject of the agency (Dakota Civil Code, sec. 1384.)

Wharton on Agency, secs. 93-4-5.
Story on Agency, secs. 463–5.
Brown vs. Pforr, 38 Cal., 550.

Was there any mutuality about this so-called contract of employment? Could the Corbin Banking Company have held Bullock to perform it, or recovered damages of him for a breach? He alleges no special damages. He never advertised or opened an office, or bought any books or furniture, or spent any money in preparing for the duties of his agency. He made no contracts for the purchase of warrants and suffered no loss for lack of means to keep his margins good; who knows but he may have used his own money all this time in this business and made these handsome profits for himself? He was not prohibited from doing so; he does not plead inability to do so. He made no demand on the Company for money, he tendered no warrants purchased for them; he did not quit other business because of this agreement; he did not lose other employment because of it. It is simply the old story of the fellow lamenting the imaginary losses he has suffered because he did not have the money to engage in a speculation. Courts of justice are not accustomed to grant their aid in estimating damages upon such uncertain, remote and illusive contingencies. If they did, litigants would multiply indefinitely, and expert testimony, borrowing the methods of calculation of Mulberry Sellers, make the administration of justice a farce.

The fact must not be overlooked that in two of these

answers the counter-claims so-called are not stated but merely referred to in the most general terms: "That "the defendant Seth Bullock, the maker of said note "has a counter-claim for damages against said Corbin "Banking Company, arising out of a breach of con- "tract between said Company and said defendant, and "that the action herein is prosecuted in the name of said "John L. Farwell as plaintiff, instead of in the name of "said Corbin Banking Company, the real party in in- "terest, in order to prevent the defendants from availing "themselves of the benefit of such counter-claim against "said Corbin Banking Company, and that the action "herein is prosecuted for the benefit of said Corbin "Banking Company."

It will be noted that this allegation follows the negative pregnant admission of the indorsement, and of plaintiff's interest as employe and agent for collection, the effect of which will be hereafter considered. It is utterly defective as a counter-claim pleaded defensively, or as a plea of not the real party. Such a plea should have alleged facts showing as matter of law, that the Corbin Banking Company was the party which alone could have maintained the action.

Raymond et al vs. Pritchard, 24 Ind. 318.
Pomeroy's Remedies sec. 711 and cases cited.

Having admitted the execution of the note to the agent, Dunton, its indorsement to the agent, Farwell, and the latter's control of it as employe and agent for collection, it is not enough to plead that the action is prosecuted in the agent's name for the benefit of the principal and to prevent the defendants availing themselves of a counter-claim against the principal. The matter stated in the counter-claim being fresh in the minds of the defendants at the time of the execution of the notes it should have occurred to them then to protect themselves; it should be clearly and explicitly

pleaded now. And the counter-claim, referred to in general terms here, being set out in the other answers particularly, and being clearly no counter-claim or cause of action at all, there is no reason why the agent, admitted to hold the legal title, should not maintain this action. This proposition will be treated more at length later, and the authorities cited which support it.

III.

There remains the inquiry, is there anything in the qualified denial that constitutes a defense to this action? Two of the answers contain a general denial of each and every allegation of the complaint "except as hereinafter stated," two a general denial "except as hereinafter specifically admitted." Then in each follow admissions and affirmative allegations. The execution and delivery of the note to the payee is admitted, also its indorsement by the firm of Star & Bullock at the time of delivery, also non-payment. That leaves unadmitted the indorsement and delivery by the payee to plaintiff, and the presentment, demand for payment and protest. But this last issue is utterly immaterial between plaintiff and the maker of the note, Bullock, and would not constitute a defense in a separate answer made by him, hence is insufficient in this action when pleaded by the defendants jointly.

When two or more defendants are sued and unite in one responsive pleading, it must be good as to each and all of these parties or it will be wholly bad. This is the rule which prevails almost universally. Thus, if the defendants join in an answer which proves to be insufficient as to one, it will be adjudged bad as to all.

Pomeroy's Remedies, sec. 606.
Morton vs. Morton 10 Iowa, 58.
Ward et al vs. Bennett et al, 20 Ind. 440
Moors vs. Parker et al, 3 Mass., 310.
Bradley va. Powers et al, 7 Cowen, 330.
1 Chitty's Pleading, 567.

We are left then with a denial of the indorsement by Dunton and delivery to plaintiff. But this is qualified by what follows. In one answer the defendants "deny "that said plaintiff is the owner of said note, or that the "defendants or either of them are indebted to the plain- "tiff thereon in any manner or in any sum. Further "answering said complaint, and as a defense thereto, "defendants allege on information and belief that the "plaintiff, John L. Farwell, is an employe or agent of "the said Corbin Banking Company of New York, "and has no interest in said note, *except as such employe* "*or agent*, and that the said Corbin Banking Company "is the owner of the note mentioned and the real party "in interest in this action." Another answer is like this as to the first sentence, but the second sentence is different: "Further answering said complaint and as a de- "fense thereto, the defendants allege upon information "and belief, that the said plaintiff, John L. Farwell, *is* "*not an indorsee for value* of said promissory note, is "not the owner thereof, and is not the real party in- "terest in the action herein, but that the said Corbin "Banking Company, a corporation organized under the "laws of the state of New York, is the owner of said "promissory note and the real party in interest as plain- "tiff in the action herein, that the said plaintiff is an em- "ploye or agent of said Corbin Banking Company, and "has no interest in said promissory note, *except as such* "*agent or employe for collection*," and elsewhere it is alleged, as already shown, that "this action is prosecuted for the benefit of said Corbin Banking Company."

The Dakota Code of Civil Procedure provides (sec. 118) "the answer of the defendant must contain: (1) A "general or specific denial of each material allegation "of the complaint controverted by the defendant, or of "any knowledge or information thereof sufficient to "form a belief. (2) A statement of any new matter,

"constituting a defense or counter-claim in ordinary "and concise language without repetition." The use of the disjunctive, *or*, indicates that it was not contemplated that a defendant would set up both a general and specific denial in his answer. But suppose he does, which shall control? It is a familiar rule of statutory construction that general provisions cannot control particular, but that particular clauses control those which are general. (Dwarris on Statutes, p. 272-3.) In like manner it is held that general statements in pleadings must be construed as qualified by more detailed and particular averments in respect to the same matter, even when that portion of the pleadings which is under this rule, to be construed as explanatory of the rest, might properly have been omitted.

2 Wait's Practice, 331.
Hatch vs. Peet, 23 Barb., 375.

Tested by this rule is not the indorsement admitted, by the allegation that plaintiff "is not an indorsee for value." The authorities are pretty well agreed that a negative pregnant is an admission.

Pomeroy's Remedies, sec. 618.
Dole vs. Burleigh, 1 Dak. 227.
Schaetzel vs. Insurance Co., 22 Wis., 412.
Bradbury vs. Cronise, 46 Cal., 287.
Crane Bros. M'f'g Co. vs. Morse, 49 Wis., 368.
Larney et al., vs. Mooney, 50 Col. 610.

It is held in California that a general denial of the averments of a verified complaint, with the qualification, "except as hereinafter admitted," is insufficient to put in issue any of its allegations and operates as an admission.

Levison vs. Schwartz 22 Cal. 230.

So in New York, in a very recent case (Potter vs. Frail, 67 How. Pr. 445, decided 1884.), Judge Follet says of a pleading which in answer to the complaint "denies each and every allegation, averment and state-

ment thereof, except such as hereinafter admitted, qualified and explained:"—"If any rule of pleading can be set-"tled by legislative enactment and by a long line of judi-"cial decisions, it must be regarded as settled that a de-"nial in this form is bad whenever the objection is raised "by demurrer or special motion." He cites a long list of cases supporting him, from both the Court of Appeals and inferior courts of the state and distinguishes the cases seeming to hold differently by showing that they do not sanction the practice when the objection is raised before trial.

Mr. Pomeroy is quite severe in his criticism of this species of answer. He describes it as a "vicious style of defense," "a contrivance of ignorance or indolence," a "most slovenly manner of stating the defense of denial."—Remedies, secs. 633-36.

It is pretty well settled in the states and territories, practicing under a Code, that any fact sustaining the plaintiff's case admitted in one part of the answer, is to be taken as true for all purposes in the case, and the plaintiff is not bound to prove it. And this is true although the answer contain a general denial.

Dole vs. Burleigh, 1 Da ., 227, 231.
Duggan et al. vs. Davey et al., (Dak.) 26 N. W. Rep. 893.
Gale et al. vs. Shillock, (Dak.) 29 N. W. Rep., 661.
Derby et al. v. Gallup, 5 Minn 85, 92.
Wiley vs. Keokuk, 6 Kansas, 105.
Clark vs. Dillon et al, 97 N. Y. 370.
Sexton vs. Rhames, 13 Wis. 114.
Hartwell vs. Page, 14 Ibid 53, 56.
Miller vs. Larson, 17 Ibid 644.
Farwell vs. Hennesy, 21 Wis. 642.
Richardson vs. Smith et al., 29 Cal. 529.

The denial that plaintiff is the owner of the note is a mere legal conclusion, so is the further denial that defendants were indebted to him. These allegations do not constitute a defense.

Neither does the general allegation that plaintiff is

not the real party in interest as shown in authorities cited *supra*.

The provisions of the Dakota Code of Civil Procedure bearing on the question are: Sec. 74. "Every "action must be prosecuted in the name of the real "party in interest, except as o herwise provided in sec- "tion 76; * * * Sec. 76. An executor or adminis- "trator, a trustee of an express trust, or a person ex- "pressly authorized by statute, may sue, without join- "ing with him the person for whose benefit the action "is prosecuted. A trustee of an express trust, within "the meaning of this section, shall be construed to in- "clude a person with whom or in whose name a contract is made for the benefit of another."

Provisions identical with these, in other states and territories, have received a very intelligent construction upholding a right of action in plaintiff here. In a case in New York in which the whole gronnd was gone over pretty thoroughly, (Considerant vs. Brisbane, 22 N. Y. 389) the note was payable to Considerant "as executive agent of" a company named, for shares of stock in such Company. The court held him a proper party plaintiff—that he was a person with whom or in whose name a contract had been made for the benefit of another.

The doctrine of this case was followed in California in an action brought upon a note very similar in form, payable on its face to the plaintiff or any other agent. (Winters vs. Rush, 34 Cal. 136).

Where an express contract has been made with an agent by a third person the agent may maintain an action upon it though he may be known to act as agent; and through his principal may or may not be entitled to a like action on the same contract.

Story on Agency, sec. 393 and cases cited.
Poor vs. Guildford, 10 N. Y. 273.

This doctrine has not been changed by the codes.

Considerant vs. Brisbane, supra.
Stoll et al. vs. Sheldon, 13 Neb., 207.
Farwell vs. Tyler, 5 Iowa, 536.
Fear vs. Jones, 6 Iowa, 169.
Poorman vs. Mills & Co., 35 Cal., 121.
Hooper vs. C. & N. W. Ry. Co., 27 Wis., 91.
Allen vs. Kennedy, 49 Wis., 589.
Waterman vs. C., M. & St. P. Ry. Co., 61 Wis., 464.

Dunton, the payee in the notes sued on here, appears upon the face of the note to have been agent for a disclosed principal, yet he was fully qualified to sue under the cases cited, and the rule laid down in Considerant vs. Brisbane. If he may, why not his assignee, alleged by the answer to be an agent of the same principal?

"If the holder of a promissory note is legally in its "possession, and is entitled to receive its payment, we "have repeatedly held that he is the proper plaintiff in "its prosecution, and this without reference to who may "ultimately be entitled to the participation in its pro-"ceeds." Justice Hunt, in Williams vs. Brown, 2 Keyes 486.

A plaintiff is the real party in interest under the Code, if he has a valid transfer as against the assignor, and holds the legal title to the demand. The defendant has no legal interest to inquire further. A payment to, or recovery by an assignee occupying this position, is a protection to the defendant against any claim that can be made by the assignor.

Sheridan vs. Mayor, 68 N. Y., 30.
Cottle vs. Cole, 20 Iowa, 481.

An assignee of negotiable paper is the real party in interest and entitled to bring the action though bound to account for the whole or a portion of the proceeds, to others. Whatever may be the relation of the plaintiff to the assignor can make no difference to the defendants. They can only raise the objection of a

defect of parties to the action, when they couple with it a substantial defense as against the alleged real party or show that the alleged real party has such a legal interest in the note, that a recovery by the plaintiff would not preclude it from being enforced, and they be thereby subjected to the risk of another action for the same subject matter.

Castner vs. Austin, 2 Minn., 32. (44).
Bank of New Haven vs. Perkins, 29 N. Y. 554
Cummings vs. Morris, 25 N. Y.. 625.
Eaton vs. Alger, 47 N. Y., 345.
Allen vs. Brown, 44 N. Y., 228.
Brown vs. Penfield, 36 N. Y. 47 .
Gushee vs. Leavitt, 5 Cal., 160.
Holden vs. Kirby, 21 Wis., 150.
Brumback vs. Oldham, 1 Idaho, 709.
McPherson vs. Weston, 64 Cal., 275.

In Missouri under Code provisions like those of Dakota, it is held that an assignee of negotiable paper to whom the assignment has been made for the purpose of collection only, and who has no interest in the proceeds whatever, except to account for them when collected, is nevertheless authorized to bring the action on such paper in his own name.

Webb vs. Morgan, 14 Mo., 428.
Beattie vs. Lett, 28 Mo., 596.
Simmons vs. Belt, 35 Mo., 461.

See also the same rule laid down in New York.

Freeman vs. Falconer, 44 N. Y. Sup. Ct., 132.

A very late declaration of the Court of Appeals of New York, on this subject will be found in the case of Hayes vs. Hathorn, et al., in 74 New York, at page 490: "It is ordinarily no defense to the party sued up- "on commercial paper to show that the transfer under "which the plaintiff holds it is without consideration or "subject to equities between him and his assignor, or "colorable and merely for the purpose of collection, or "to secure the debt contracted by an agent without suf- "ficient authority. It is sufficient to make the plaintiff "the real party in interest if he have the legal title either

"by written transfer or delivery, whatever may be the "equities between him and his assignor, but to be en- "titled to sue he must now have the right of possession "and ordinarily be the legal owner. Such ownership "may be as eqitable trustee; it may have been acquired "without adequate consideration, but must be sufficient "to protect the defendant upon a recovery againt him "from a subsequent action by the assignor."

Construing the answers in the case at bar in the light of the foregoing decisions, noting the express admission that plaintiff has an interest as employe and agent of the alleged real party for collection of these notes, the further admission by the negative pregnant that plaintiff is the indorsee of the notes, the trivolous character of the alleged counter-claim—and the conclusion must inevitably follow, that the plaintiff was a proper party to bring this action, and is entitled to recover therein. The demurrer is well taken, and the judgment of the Supreme Court of Dakota should be affirmed.

Respectfully submitted,

VAN CISE & WILSON,
J. W. SMITH.